92-1136

Supreme Court, U.S.
FILED
DEC 30 1992
OFFICE OF THE CLERK

C.A. 90-16831

IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1992

JEAN BELANGER, Petitioner

vs.

MADERA UNIFIED SCHOOL DISTRICT;
THOMAS J. RILEY, Superintendent of
MADERA UNIFIED SCHOOL DISTRICT, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JEAN BELANGER, Petitioner

MARY LOUISE FRAMPTON
FRAMPTON, HOPPE, WILLIAMS & BOEHM
2444 Main Street, Suite 110
Fresno, California 93721-2256
Attorneys for Petitioner

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QUESTION PRESENTED FOR REVIEW

Whether local school districts in California enjoy absolute immunity from suit under the Eleventh Amendment to the United States Constitution.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner JEAN BELANGER respectfully prays that a writ of certiorari issue to review the decision of the Court of Appeals for the Ninth Circuit entered in the above-entitled action on April 29, 1992.

DECISIONS BELOW

On November 2, 1990, the U.S. District Court for the Eastern District of California entered judgment for respondent MADERA UNIFIED SCHOOL DISTRICT on the grounds that it was a state agency absolutely immune from suit under the Eleventh Amendment to the United States Constitution. The District Court's jurisdiction was invoked under 29 U.S.C.Section 1343.

The United States Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court on April 29, 1992, on the grounds that local school districts in California are mere agents of the state and enjoy absolute

immunity from suit under the Eleventh Amendment. The jurisdiction of the Court of Appeals was invoked under 28 U.S.C. Section 1291. (Appendix A)

On May 12, 1992, petitioner filed a Petition for Rehearing en Banc. An active judge requested a vote on whether to rehear the matter en banc but the matter failed to receive a majority of votes. The petition was denied on October 1, 1992. (See Appendix B)

PARTIES

The parties are solely those listed in the caption.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(l).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. The Eleventh Amendment to the United States Constitution.

2. 42 U.S.C. Section 1983.

3. Articles l, Section 7 and Article IX, Section 14 of the California Constitution.

4. California Education Code Sections 35160, 35160.1, 35162, and 35201

5. California Government Code Sections 970(c) and 9709.4

6. Article VI, Sections 2 and 3 of the Ohio Constitution

7. Ohio Rev. Code Ann. Sec. 3301.07

STATEMENT OF THE CASE

Petitioner JEAN BELANGER filed suit against her employer, respondent MADERA UNIFIED SCHOOL

DISTRICT, for violating her First and Fourteenth Amendment rights when it demoted her in retaliation for her federal court testimony against the school district in the successful gender discrimination trial of a female colleague.

Respondent MADERA UNIFIED SCHOOL DISTRICT asserted that it was absolutely immune from suit under the Eleventh Amendment because it was a mere agent of the state. The District Court ordered the parties to engage in extensive discovery to ascertain the financial relationship between local school districts and the State of California. That discovery elicited the following information.

Local school districts are anomalies which resist precise definition or classification. Their status in California has evolved by accident of history, tax reform, and legislative action.

Although education is a matter of state concern, local school districts are independent entities which govern themselves, sue and are sued in their own names, and hold

and convey property. Education Code Sections 35162 and 35160.

Historically, all school districts in California derived their revenue from local property taxes and received little state funding. Passage of Proposition 13, however, restricted property tax funding and created a school financing system which allows wide variations between districts in their funding sources. Many districts rely heavily on state funding for their operations while others are financed primarily from local property taxes.

The formula by which the state determines the amount of funding which it will provide to each school district is called the "revenue limit" method. Under this method the state uses pupil population (average daily attendance of students) and other factors to decide the amount of revenue (the "revenue limit") which each school district will need to operate in that year.

If the "revenue limit" can be collected from local

property taxes then the state contributes only a nominal amount of "basic aid". If, on the other hand, the local area in which the district is located cannot generate the required level of funds through its property tax base, the state will make up the difference between the amount collected in property taxes and the "revenue limit." The percentage of "revenue limit" funding which can be satisfied from local property taxes fluctuates each year in each district as the pupil population changes and the property tax base varies. In short, the "revenue limit" funds include both state and local property tax monies in proportions which vary significantly from district to district and from year to year.

In the last fiscal year for which figures were available, 24% of Madera Unified School District's "revenue limit" funds were derived from local property taxes and 76% from state funds. In contrast, "basic aid" school districts like Taft and McKittrick School Districts (within the Eastern District of California) and San Mateo and Belmont school districts

(within the Northern District) received 100% of their "revenue limit" entitlement from local property taxes.

"Revenue limit" funds are kept on deposit with the county treasurers in the counties in which the local school districts are located and are disbursed to such districts as needed. The funds are invested along with other county monies at the discretion of the respective county treasurers.

The use of such "revenue limit" funds is unrestricted; that is, the governing boards of the local school districts exercise discretion as to their use. "Revenue limit" funds are not the only monies available to local school districts. Districts also rely on other local income, interest income from investments made by county treasurers, federal aid which is customarily restricted in its use, and state funds which are also categorically restricted.

There are no limitations or restrictions imposed by the state on the manner in which local school districts may pay

federal court judgments except, of course, that categorically restricted funds cannot be utilized for that purpose. The districts could pay federal court judgments from funds generated by local property taxes, by state contributions, by interest earned on those amounts, by funds carried over from previous years, or other sources. The respondent set forth no facts revealing the source of funds which would be used to pay any judgment in this action.

REASONS FOR GRANTING THE WRIT

The Court of Appeals for the Ninth Circuit has decided a federal question in a way which conflicts both with decisions of the United States Supreme Court and with its own decisions.

The unprecedented opinion of the Court of Appeals for the Ninth Circuit that local school districts are absolutely

immune from suit under the Eleventh Amendment is in direct conflict with the ruling of this Court on the same question and with the Ninth Circuit's own prior rulings.

In **Mount Healthy City School District v. Doyle,** 429 U.S. 274, 280, 97 S. Ct. 568, 572, 50 L. Ed. 2d 471 (1977), this Court ruled that school districts in Ohio are not immune from suit under the Eleventh Amendment despite state funding and control because they are more like cities or counties than they are like state agencies.

In **Padway v. Palches**, 665 F. 2d 965 (9th Cir. 1982) the Ninth Circuit found the decision in **Mount Healthy City School District v. Doyle, supra,** to be controlling and ruled that under the **Mount Healthy** standard California local school districts, like Ohio school districts, are not state agencies immune from suit.[1]

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[1] The underlying action in **Padway v. Palches, supra**, was remarkably similar to the case at bar. In that case an elementary school principal - like petitioner BELANGER - was suing her employer for gender

In the case at bar the Ninth Circuit entirely ignored its prior ruling in **Padway v. Palches, supra,** and gave **Mount Healthy City School District v. Doyle, supra,** only cursory consideration. It concluded that the **Mount Healthy City School District v. Doyle, supra,** precedent was distinguishable on two grounds which do not survive scrutiny.

First, the Court asserts that in **Mt. Healthy** the key factor was "the treatment of the school district under Ohio state law" and under such law "the state does not include political subdivisions" and "political subdivisions include local school districts." (Appendix B) In contrast, according to the reasoning of the Opinion, school districts are not political subdivisions "but rather agents of the state itself" under California law. Id.

The California Government Code itself demonstrates the

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discrimination arising out of her reassignment and discharge.

Court's error. Government Code section 970(c) states that:

> "Local public entity" includes a county, city district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the Regents of the University of California and does not include the state or any office, officer, department, division, bureau, board, commission or agency of the state claims against which are paid by warrants drawn by the Controller.

When California Government Code Section 970(c) was amended to include the above language in 1980, it repealed a number of special statutes applying to specific local public entities including Education Code Section 35201 which defined the responsibility of local school districts for payment of their debts. See 1980 Addition to Law Revision Commission Comment, Government Code Section 970(c) and Education Code Section 35201.

In short, the California Legislature decided in 1980 that a local school district is a "local public entity" and not a state agency and California law treats its local school districts in the same manner as does Ohio law.

The second basis upon which the Opinion seeks to distinguish **Mt. Healthy City Board of Education v. Doyle, supra**, is that "California has vested control of state funding in the state rather than local governments" and thus California and Ohio are different. (Appendix A) An examination of Ohio law, however, demonstrates that the control of school district funding is with the state, not local governments.

Article VI of the Ohio Constitution provides in part that:

> **§2 School funds.**
>
> The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state;. . .

> **§3 Public school system; boards of education.**
>
> Provisions shall be made by law for the organization, administration and control of the
>
> public school system of the state supported by public funds; . . .

Moreover, the Ohio State Board of Education is responsible for administering the allocation and distribution of state and local funds for local school districts. Ohio Rev. Code Ann. Sec. 3301.07.

As Justice Rehnquist noted in **Mt. Healthy City Board of Education v. Doyle**, **supra** at 280:

> Petitioner is but one of many local school boards within the State of Ohio. It is subject to some guidance from the State Board of Education...and receives a significant amount of money from the State...But local school boards have extensive powers to issue bonds..and to levy taxes

> within certain restrictions of state law.

These same factors apply to local school districts in California.

In sum, the same factors which made school districts in Ohio subject to suit under **Mount Healthy City School District v. Doyle, supra,** apply in California and the holding of this Court cannot be ignored by the Ninth Circuit.

Furthermore, if a local school district is actually the state, then local counties and cities and other public entities which are also creatures of the state may soon acquire immunity as well.

For example, in **Moor v. County of Alameda**, 411 U.S. 693, 717-721, (1973), the County of Alameda argued that it was merely an arm or agent of the State. The Supreme Court rejected the County's position, reasoning that under California law a county may sue and be sued, is deemed a

"local public entity", may sell, hold, or otherwise deal in property, is liable for its own judgments, is authorized to provide public services, and can issue bonds payable from county taxes. Based upon such factors, according to the Supreme Court, a California county is an independent entity and not the state. All of the above criteria, however, apply equally to a California local school district as they do to a California county.

In the Opinion at issue, the Court has relied heavily on the state's control over local school district financing. Such reliance is based upon **Mitchell v. Los Angeles Community College District**, 861 F. 2d 198 (9th Cir. 1988), which listed as a key factor in judging Eleventh Amendment immunity whether a money judgment would be satisfied out of state funds.

However, as a matter of California statutory law, a

judgment entered against a school district cannot be satisfied by the State Treasury. Government Code Section 970.4 provides that the governing board of a local public entity, which includes a local school district, must pay a judgment in a certain specified manner. The State Controller is not responsible for the judgments of local school districts. California Government Code Section 970(c).

At issue in this case is whether the courthouse door will be shut on those hundreds of thousands of local school district employees and students whose statutory and constitutional rights have historically been protected by the federal courts. If a local school district is a state for purposes of the Eleventh Amendment and all suits against them are barred by sovereign immunity, whole classes of people will be deprived of rights which have been in existence for two

hundred years.[2]

CONCLUSION

For the foregoing reasons petitioner respectfully prays that the petition for a writ of certiorari be granted.

Dated, Fresno, California,

December 22, 1992.

Respectfully submitted,

FRAMPTON, HOPPE, WILLIAMS & BOEHM



MARY LOUISE FRAMPTON
Attorney for Petitioner
JEAN BELANGER

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[2] The Supreme Court has ruled recently that Eleventh Amendment immunity extends to claims in both federal and state courts. Will v. Michigan Dept. of State Police, 491 U.S. _____, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989).

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JEAN BELANGER,
Plaintiff-Appellant,
v.
MADERA UNIFIED SCHOOL DISTRICT; BOARD OF TRUSTEES OF MADERA UNIFIED SCHOOL DISTRICT; THOMAS J. RILEY, School Superintendent,
Defendants-Appellees.

No. 90-16831
D.C. No. CV-89-00211-REC
OPINION

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, Chief District Judge, Presiding

Argued and Submitted
February 14, 1992—San Francisco, California

Filed April 29, 1992

Before: Cynthia Holcomb Hall and Charles Wiggins, Circuit Judges, and C.A. Muecke*, District Judge.

Opinion by Judge Wiggins

*Hon. C.A. Muecke, Senior United States District Judge for the District of Arizona, sitting by designation.

SUMMARY

Civil Litigation & Procedure/Immunity/Labor and Employment

Affirming a district court grant of summary judgment, the court of appeals held that a California school district was immune from suit under the eleventh amendment as an agent of the state performing governmental functions, a judgment against which would be satisfied out of state funds.

Appellant Jean Belanger brought a section 1983 action against a California school district alleging that her removal as a school principal and reassignment to a classroom teaching position was because of her gender and as retaliation for testifying against the school district in a separate discrimination action. According to the school district, Belanger failed to work effectively with parents and teachers, and illegally altered student records. The district court granted summary judgment for the school district, holding that as a matter of law it was a state agency immune from suit under the eleventh amendment.

[1] Whether the school district in question was a state agency for purposes of eleventh amendment immunity turned on the application of the multi-factored balancing test summarized in *Mitchell v. Los Angeles Community College Dist.* The most crucial question was whether the district had such independent status that a judgment against it would not impact the state treasury. [2] An analysis of the *Mitchell* factors showed that the school district in this case was a state agency for eleventh amendment purposes. [3] Here, a money judgment against the school district would be satisfied out of state funds. Unlike most states, California school districts have budgets that are controlled and funded by the state government rather than the local districts. [4] The result of the *Serrano* decisions and Proposition 13 has been strict state

control of public school funding. [5] In addition, the local character of property tax revenue is lost when it is commingled with state funds under a state controlled revenue list. Thus, under California's revenue limit system, a judgment against the school district would be satisfied from state funds.

[6] California law treats public schooling as a statewide or central governmental function. [7] California public schools have long been treated as state agencies under California law. [8] That school districts enjoy wide discretion and considerable autonomy does not change the fact that public schooling is considered a central governmental function, and that school districts are considered agents of the state in carrying out this function. [9] It does not necessarily follow that a school district can be sued for money damages just because it can be sued in its own name. [10] The fact that school districts can own property was entitled to little weight in the overall balance. [11] School districts have the corporate status of agents of the state for purposes of school administration.

[12] Because California has vested control of school funding in the state rather than in local governments, the school district in this case was easily distinguished from the Ohio school district in *Mount Healthy*.

COUNSEL

Mary Louise Frampton, Frampton, Soley, Hoppe, Williams & Boehm, Fresno, California, for the plaintiff-appellant.

Michael E. Smith and Ellen M. Jahn, Lozano, Smith, Smith, Wolliver & Behrens, Fresno, California, for the defendants-appellees.

OPINION

WIGGINS, Circuit Judge:

OVERVIEW

Jean Belanger, plaintiff/appellant, appeals the district court's grant of summary judgment in favor of the Madera Unified School District (school district), defendant/appellee. Belanger argues that the district court erred in finding that the school district is immune to suit under the Eleventh Amendment. Belanger filed a timely notice of appeal on November 30, 1990, and this court has jurisdiction under 28 U.S.C. § 1291 (1988). We affirm.

BACKGROUND

At the start of the 1988-89 school year, Belanger was removed from her position as principal at the Ripperdan Elementary School and reassigned to a classroom teaching position. Belanger alleges she was reassigned because of her gender and in retaliation for testifying against the school district in a separate discrimination action. The school district disputes Belanger's allegations and claims that Belanger was reassigned because of her extremely poor performance as a principal. According to the school district, Belanger failed to work effectively with parents and teachers and illegally altered student records. This allegedly caused the district to receive continuous complaints from parents and teachers about Belanger and resulted in six of Ripperdan Elementary's nine teachers leaving the school.

On March 20, 1989, Belanger brought an action against the school district under 42 U.S.C. § 1983 (1988). Belanger engaged in extensive discovery to obtain evidence showing that a judgment against the school district would not be satisfied out of state funds. After this discovery, the district court granted the school district's motion for summary judgment.

The district court determined that as a matter of law the school district is a state agency that is immune from suit under the Eleventh Amendment to the United States Constitution.

DISCUSSION

The only issue on appeal is whether the school district is a state agency for purposes of the Eleventh Amendment.[1] This issue turns on the application of law to established facts. Thus, the grant of summary judgment is reviewed de novo to determine whether, viewing the evidence in a light most favorable to Belanger, the district court correctly applied the relevant substantive law. *Tzung v. State Farm Fire & Cas. Co.*, 873 F.2d 1338, 1339-40 (9th Cir. 1989); *see also United States v. McConney*, 728 F.2d 1195, 1204 (9th Cir.) (en banc) (application of law to established facts is reviewed de novo), *cert. denied*, 469 U.S. 824 (1984).

The Eleventh Amendment to the United States Constitution provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." Although the exact limits of the Eleventh Amendment are difficult to determine,[2] it is clear that the

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[1]The district court also ruled that injunctive relief was barred by the Eleventh Amendment because such relief would be retrospective in nature, citing *Papasan v. Allain*, 478 U.S. 265, 277-78 (1986). Belanger fails to raise this issue in her statement of issues presented for review, and she does not discuss this issue in her opening brief. Instead, Belanger addresses this issue for the first time in a footnote in her reply brief, depriving the school district of the opportunity to address Belanger's argument. Because "appellants cannot raise a new issue for the first time in their reply briefs," we decline to consider Belanger's argument on the issue of injunctive relief. *Nevada v. Watkins*, 914 F.2d 1545, 1560 (9th Cir. 1990) (quoting *United States v. Birtle*, 792 F.2d 846, 848 (9th Cir. 1986)).

[2]Compare Pennsylvania v. Union Gas Co., 491 U.S. 1, 14-19 (1989) (Brennan, J., joined by Marshall, J., Blackmun, J., and Stevens, J.) (Con-

Eleventh Amendment prohibits actions for damages against state agencies when Congress has failed to express a contrary intent. *See Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985) (congressional intent to override the principles of sovereign immunity embodied in the Eleventh Amendment must be "unmistakably clear"). In this case, Belanger concedes that her claims for damages are barred if the school district is indeed a state agency for purposes of the Eleventh Amendment. *See, e.g., Quern v. Jordan*, 440 U.S. 332 (1979) (state governments and their agencies are not amenable to suit under 42 U.S.C. § 1983).

[1] Whether the school district is a state agency for purposes of the Eleventh Amendment turns on the application of the multi-factored balancing test summarized in *Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir. 1988), *cert. denied*, 490 U.S. 1081 (1989).

> To determine whether a governmental agency is an arm of the state, the following factors must be examined: [1] whether a money judgment would be satisfied out of state funds, [2] whether the entity performs central governmental functions, [3] whether the entity may sue or be sued, [4] whether the entity has the power to take property in its own name or only the name of the state, and [5] the corporate status of the entity.

Id. (citing *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir. 1982)). We must examine these factors in light of the way California law treats the governmental agency. *Id.* As

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gress has the power to abrogate Eleventh Amendment immunity when legislating pursuant to the Commerce Clause) *with id.* at 35-42 (Scalia, J., joined by Rehnquist, C.J., O'Connor, J., and Kennedy, J.) (Congress cannot abrogate Eleventh Amendment immunity under the Commerce Clause).

indicated by the reasoning and holding in *Mitchell*, the first factor is predominant: "The most 'crucial question ... is whether the named defendant has such independent status that a judgment against the defendant would not impact the state treasury.' " *Jackson*, 682 F.2d at 1350 (quoting *Ronwin v. Shapiro*, 657 F.2d 1071, 1073 (9th Cir. 1981)); *see also Edelman v. Jordan*, 415 U.S. 651, 668 (1974) (if a "retroactive award of monetary relief" will be paid from state treasury funds, it is barred by the Eleventh Amendment); *Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345, 1349 (9th Cir. 1981) ("Obviously the source from which the sums sought by the plaintiff must come is the most important single factor in determining whether the Eleventh Amendment bars federal jurisdiction."), *aff'd on other grounds sub nom. Kush v. Rutledge*, 460 U.S. 719 (1983).

A. Application of the Mitchell Factors

[2] An analysis of the five *Mitchell* factors demonstrates that the school district in this case is a state agency for purposes of the Eleventh Amendment. Although Belanger's view of certain factors are not without merit, Belanger cannot prevail on the first and most important factor because a judgment against the school district would be satisfied out of state funds. Moreover, under California law, the school district is a state agency that performs central governmental functions. Thus, the school district is protected by the Eleventh Amendment.

1. A Money Judgment Would Be Satisfied Out of State Funds

[3] Unlike most states, California school districts have budgets that are controlled and funded by the state government rather than the local districts. As in *Mitchell*, the school district's budget in this case "is made up of funds received from the state's general fund pursuant to a state calculated formula." 861 F.2d at 201. California's centralized control of

school funding can be attributed to two key factors—decisions by the California Supreme Court in 1971 and 1976, and the adoption of Proposition 13 in 1978.

In *Serrano v. Priest*, 487 P.2d 1241 (Cal. 1971) (*Serrano I*), the California Supreme Court determined that the system of public school financing in California that failed to equalize school spending for each student was unconstitutional. The California legislature responded by enacting Senate Bill 90 in an attempt to equalize public school funding. The legislature significantly increased state funding for school districts and created "revenue limits"—limits on the expenditures per pupil in school districts with ample local funding. *See Serrano v. Priest*, 557 P.2d 929, 931-36 (Cal. 1976) (*Serrano II*), *cert. denied*, 432 U.S. 907 (1977).

However, the California Supreme Court was still unsatisfied because the legislature had provided for voter overrides and permissive overrides—special exceptions to the revenue limits. In *Serrano II*, the California Supreme Court ruled that the equal protection provisions of the California Constitution require strict statewide equalization of school spending per pupil. Under *Serrano II*, the state has a duty to ensure that all school districts receive an equal amount of funding per student. Thus, the state must prevent wealthier districts from raising too much local revenue, enabling California to equalize school district budgets through state spending. *See* 557 P.2d at 937, 958.

Proposition 13's property tax limitations inadvertently helped California achieve the result mandated in *Serrano II*. By reducing and capping the property tax revenues used to fund local schools, Proposition 13 ensured that the state, rather than local school districts, would control funding for public schools.

[4] The result of the *Serrano* decisions and Proposition 13 has been strict state control of public school funding. The

state sets a revenue limit for each school district based on average attendance, subtracts property tax revenues from that limit, and allocates the balance to the school district from the state school fund. *See generally* Cal. Educ. Code §§ 41600-41610, 42238-42251 (West 1978 & Supp. 1992). In short, the state determines the amount of money that school districts may spend per pupil and then provides the necessary state funds.

In the present case, Belanger concedes that seventy-five percent of the school district's budget comes directly from the state school fund. However, Belanger argues that a judgment might be satisfied out other funds in the district's budget derived from local property taxes. According to Belanger, "There is simply no way of knowing whether a money judgment in this litigation would be paid from state funds or local funds or a combination of both."

In light of California's centralized school funding system, this argument is irrelevant. Under the revenue limit system, state and local revenue is commingled in a single fund under state control, and local tax revenue lost to a judgment must be supplanted by the interchangeable state funds already in the district budget. Any local funds withdrawn from the budget to pay a judgment are unavailable for educational purposes, and state funds in the budget must cover any critical educational expenses that the local funds would have covered absent the judgment. This effectively draws state funds away from other programs in the budget to pay the judgment. In essence, any use of the commingled funds is a use of state funds. *See Mitchell*, 861 F.2d at 201 (stressing that "the district's budget is made up of funds received from the state's general fund pursuant to a state calculated formula").

[5] Moreover, the local character of property tax revenue is lost when it is commingled with state funds under a state controlled revenue limit. As the district court noted, "If the entitlement from the property tax decreases, the amount of the

revenue limit entitlement funded by the state increases, and vice-versa." Under the centralized revenue limit system, the allocation of property tax revenue is hopelessly intertwined with the allocation of state funds, and any change in the allocation of property tax revenue has a direct effect on the allocation of state funds.[3]

Finally, because the state has complete control over the amount of property tax revenue that the district receives, and because this revenue is simply credited toward the revenue limit payment from the state fund, the property tax revenue is no more local than state income taxes generated from the same area. The state has assumed the burden of funding public schools, and property tax revenue allocated to the public school revenue limit program is state money collected for a state purpose.

In summary, the bulk of the school district's budget comes directly from the state school fund, and the property tax revenue in the budget is interchangeable with the state funds and is treated as state funds for all practical purposes. Under California's revenue limit system, a judgment against the school district would be satisfied from state funds.

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[3]According to Belanger, the *Mitchell* decision is flawed because it incorrectly states that "some fees charged by the district's colleges go to the state." 861 F.2d at 201. Belanger's complaints about *Mitchell* ignore the key point that state and local funds are interchangeable and hopelessly commingled under California's school funding system. Whether the technical accounting procedures list the fees as going into the state fund before they are paid back to the college district is irrelevant. In any practical sense, these fees are state funds under state control. The fees are credited against the state payments to the community college district. The practical result is the same as if the fees had been directly collected by the state.

Belanger also argues that the *Mitchell* precedent should be reconsidered because the plaintiff in *Mitchell* was not represented by counsel and did not conduct discovery. According to Belanger, the *Mitchell* decision rests on an inadequate record. As the district court pointed out, Belanger asserts no authority for the proposition that this court may reevaluate the factual findings in *Mitchell*. We find that *Mitchell* controls the case at bar.

2. *Public Schooling Is a State Function Under California Law*

[6] California law treats public schooling as a statewide or central governmental function. As discussed above under the first *Mitchell* factor, California has assumed total control over the funding of public schools. Moreover, California exercises substantial centralized control over other public school decisions. For example, the state government dictates when students may be expelled or suspended, Cal. Educ. Code § 48900 (West Supp. 1992), and the state exercises control over the textbooks that are used in public schools. Cal. Const. art. IX, § 7.5 (West Supp. 1992); Cal. Educ. Code § 51510 (West 1989). In addition, the California Superintendent of Public Instruction has broad authority to "[s]uperintend the schools of this state." Cal. Educ. Code § 33112(a) (West 1978).

[7] California public schools have long been treated as state agencies under California law. The California Constitution requires the state legislature to "provide for a system of common schools" and sets forth detailed requirements for those schools. Cal. Const. art. IX, §§ 5, 6 (West 1954 & Supp. 1992). In *Hall v. City of Taft*, 302 P.2d 574 (Cal. 1956), the California Supreme Court recognized that public schools are a central government function in California:

> The public schools of this state are a matter of statewide rather than local or municipal concern; their establishment, regulation and operation are covered by the [state] Constitution and the state Legislature is given comprehensive powers in relation thereto.

Id. at 576. The *Hall* decision went on to emphasize that "[s]chool districts are agencies of the state for the local operation of the state school system." *Id.* at 577.

[8] Belanger argues that school districts enjoy wide discretion and considerable autonomy since the enactment of Cal.

Educ. Code § 35160.1 in 1987. However, section 35160 does not change the fact that public schooling is considered a central governmental function under California law and that school districts are considered agents of the state in carrying out this function. As Belanger recognizes, it is the *state legislature* that has acknowledged the local needs of the individual school districts throughout the state. That the state itself has decided to give its local agents more autonomy does not change the fact that the school districts remain state agents under state control.

California law is well settled that providing public education is a state function.

> Leaving aside for the moment statutes and regulations, which more specifically delineate state supervision of education, a perusal of the foregoing constitutional provisions and the cases interpreting them leaves no doubt that, as has been repeatedly held by California courts, the management of public schools in California is a matter of statewide supervision rather than a local concern. Moreover, the Legislature has plenary authority over the education of California's youth. Thus, although the state can assign certain duties with respect to the local operation of schools to local agencies, it cannot by such incidental delegations abdicate its role as the entity ultimately responsible for the proper and lawful functioning of the state's schools.

San Francisco NAACP v. San Francisco Unified School Dist., 484 F. Supp. 657, 662 (N.D. Cal. 1979) (citations omitted); *see also Stones v. Los Angeles Community College Dist.*, 572 F. Supp. 1072, 1077 (C.D. Cal. 1983) ("Under California law, the education of the citizenry is an exclusive state function that cannot be delegated."), *aff'd on other grounds*, 796 F.2d 270 (9th Cir. 1986).

Belanger is correct that public schooling is usually considered to be a local governmental function. However, through the state constitution, statutes, and supreme court decisions, California has made public schooling a state governmental function. Because the panel's analysis must be governed by "the way state law treats the [school district]," *Mitchell*, 861 F.2d at 201, Belanger's argument fails. Under California law, school districts are agents of the state that perform central governmental functions.

3. School Districts Can Sue and Be Sued

[9] It is undisputed that California school districts can sue and be sued in their own name. Cal. Educ. Code § 35162 (West 1978). Thus, the district court is correct that this factor militates against a finding of Eleventh Amendment immunity. However, it does not necessarily follow that the school district can be sued for money damages just because it can be sued in its own name. If a school district is a state agency for purposes of the Eleventh Amendment, suits against the district in its own name are subject to the same Eleventh Amendment constraints as suits against the state. Therefore, although this third *Mitchell* factor deserves some consideration, this factor is entitled to less weight than the first two factors.

4. School Districts Can Own Property

[10] It is also undisputed that school districts can hold property in their own name. Cal. Educ. Code § 35162. However, California law still treats such property as state property rather than local government property: "The beneficial ownership of property of the public schools is in the state." *Hall*, 302 P.2d at 577. Thus, although the district court found that this factor militates against Eleventh Amendment immunity, the property ownership analysis is a close question and for this reason is entitled to little weight in the overall balance.

5. *School Districts Have the Corporate Status of State Agents*

[11] Belanger argues that the fifth *Mitchell* factor provides no guidance in resolving the Eleventh Amendment immunity issue. Belanger focuses on the fact that school board members are often viewed as both "municipal officers" and "state officers." This argument ignores the fact that "[s]chool districts are agencies of the state for the local operation of the state school system." *Hall*, 302 P.2d at 577. We agree with the district court's conclusion that school districts have the corporate status of agents of the state for purposes of school administration.

B. The *Mount Healthy* Analogy

Belanger relies heavily on *Mount Healthy City Bd. of Educ. v. Doyle*, 429 U.S. 274, 280-81 (1977) and argues that the California school district in this case is analogous to the school district in *Mount Healthy*. However, Belanger ignores the key differences between the Ohio school district in *Mount Healthy* and the school district in this case.

In *Mount Healthy*, the key factor was the treatment of the school district under Ohio state law: "Under Ohio law the 'State' does not include 'political subdivisions,' and 'political subdivisions' do include local school districts." *Id.* at 280. Under California law, school districts are not political subdivisions, but rather agents of the state itself. Moreover, "local school boards [in Ohio] have extensive powers to issue bonds and to levy taxes within certain restrictions of state law." *Id.* (citations omitted). In California, the state has assumed responsibility for and control over school funding. Under California's revenue limit system, any local revenue is simply credited against the state school fund payments, and there is little local autonomy in school funding.

[12] In the critical area of school funding, around which this litigation revolves, California has selected a different path

from that of most states. California has vested control of school funding in the state rather than local governments. Thus, the school district in this case is easily distinguished from the Ohio school district in *Mount Healthy*.

CONCLUSION

The district court correctly applied the *Mitchell* test and determined that the school district was immune to suit under the Eleventh Amendment. The court determined that the school district is an agent of the state that performs state governmental functions and that a judgment would be satisfied out of state funds. We are in agreement with the district court and can find no error in the court's analysis. Therefore, we AFFIRM the district court's decision.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U. S. Court of Appeals
F I L E D
October 1, 1992
Cathy A. Catterson, Clerk

JEAN BELANGER,

Plaintiff-Appellant,

vs.

MADERA UNIFIED SCHOOL DISTRICT; BOARD OF TRUSTEES OF MADERA UNIFIED SCHOOL DISTRICT; THOMAS J. RILEY, School Superintendent,

Defendants-Appellees.

No. 90-16831
D.C. No. 90 16831

ORDER

Before: HALL and WIGGINS, Circuit Judges, and MUECKE, District Judge*

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc.

The full court was advised of the suggestion for rehearing

en banc. An active judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

---

* Hon. C.A. Muecke, Senior United States District Judge for the District of Arizona, sitting by designation.

APPENDIX C

California Government Code Section 970(c)

"Local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the Regents of the University of California and does not include the state or any office, officer, department, division, bureau, board, commission or agency of the state claims against which are paid by warrants drawn by the Controller.

California Government Code Section 970.4

Except as provided in Section 970.6, the governing body of a local public entity shall

pay, to the extent funds are available in the fiscal year in which it becomes final, any judgment, with interest thereon, out of any funds to the credit of the local public entity that are:

(a) Unappropriated for any other purpose unless the use of such funds is restricted by law or contract to other purposes; or

(b) Appropriated for the current fiscal year for the payment of judgments and not previously encumbered.

California Education Code Section 35160

On and after January 1, 1976, the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with

the purposes for which school districts are established.

California Education Code 35160.1

(a) The Legislature finds and declares that school districts, county boards of education, and county superintendents of schools have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts, county boards of education, and county superintendents of schools should have the flexibility to crete their own unique solutions.

(b) In enacting Section 35160, it is the intent of the Legislature to give school districts, county boards of education, and county superintendents of schools broad authority to carry on activities and programs, including the

expenditure of funds for programs and activities which, in the determination of the governing board of the school district, the county board of education or the county superintendent of schools are necessary or desirable in meeting their needs and are not inconsistent with the purposes for which the funds were appropriate. It is the intent of the Legislature that Section 35160 be liberally construed to effect this objective.

(c) The Legislature further declares that the adoption of this section is a clarification of existing law under Section 35160.

California Education Code Section 35162

In the name by which the district is designated the governing board may sue and be sued, and hold and convey property for the use

and benefit of the school district.

California Education Code Section 35201

The governing board of any school district shall pay any judgment for debts, liabilities, or damages out of the school funds to the credit of the district, subject to the limitation on the use of the funds provided in the Constitution. If any judgment is not paid during the tax year in which it was recovered:

(a) And if, in the opinion of the board, the amount is not too great to be paid out of taxes for the ensuing year, the board shall include in its budget for the ensuing tax year a provision to pay the judgment, and shall pay it immediately upon the obtaining of sufficient funds for that purpose.

(b) And if, in the opinion of the board, the

amount of the judgment is so great that undue hardship will arise if the entire amount is paid out of taxes for the next ensuing tax year, the board shall provide for the payment of the judgment in not exceeding 10 annual installments with interest thereon up to the date of each payment, and shall include provision for the payment in each budget for not exceeding 10 consecutive tax years next ensuing. Each payment shall be of an equal portion of the principal of he judgment, except that the board, in its discretion, may provide for the prepayment of any one or more installments or any part of an installment.

CERTIFICATE OF SERVICE

I hereby certify that typewritten copies of the Petition for Writ of Certiorari to the United States Court of Appeal for the Ninth Circuit for Petitioner JEAN BELANGER in the above-captioned case have been served upon those parties listed below by placing the same in the United States Mail, postage prepaid, properly addressed, this 28th day of December, 1992.

Clerk of the Supreme Court
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543
(40 copies)

MICHAEL SMITH
Jerome Behrens
Ellen Jahn
LOZANO, SMITH, SMITH & WOLIVER
2444 Main Street, Suite 260
Fresno, California 93721
Attorneys for Respondents
(three copies)

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 28th day of December, 1992, at Fresno, California.



Margaret Gaeta

SUPREME COURT, U.S.
FILED
JAN 27 1993
OFFICE OF THE CLERK

No. 92-1136

In The

Supreme Court of the United States

October Term, 1992

JEAN BELANGER,

Petitioner,

v.

MADERA UNIFIED SCHOOL DISTRICT;
THOMAS J. RILEY, Superintendent of
MADERA UNIFIED SCHOOL DISTRICT,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MICHAEL E. SMITH
Counsel of Record
ELLEN M. JAHN
LOZANO SMITH
SMITH WOLIVER & BEHRENS
2444 Main Street, Suite 260
Fresno, California 93721
(209) 445-1352
Attorneys for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

Are Respondents entitled to Eleventh Amendment immunity from suit under 42 U.S.C. § 1983?

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Respondents Madera Unified School District ("the District") and Thomas J. Riley, Superintendent, respectfully pray that no writ of certiorari issue to review the decision of the Court of Appeals of the Ninth Circuit entered in this action on April 29, 1992.

DECISIONS BELOW

The United States District Court for the Eastern District of California entered judgment on November 2, 1990, in favor of Respondents on the ground that the Eleventh Amendment of the United States Constitution provided immunity from suit under 42 U.S.C. § 1983.

On April 29, 1992, the United States Court of Appeals for the Ninth Circuit affirmed the judgment of the District Court. Belanger filed, on May 12, 1992, a Petition for Rehearing en banc. The petition was denied on October 1, 1992.

PARTIES TO THE PROCEEDING

The parties are solely those listed in the caption.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

1. The Eleventh Amendment to the United States Constitution.

2. 28 U.S.C § 1254, 1254(1); and, 29 U.S.C. §§ 201, 206 subd. (d), 216 subd. (b); 42 U.S.C. §§ 1983, 1985

3. California Constitution article 9, § 6, 5-7, 14; article 13(A), § 1; and, article 16, § 8.

4. California Education Code §§ 15100, 35720, 37252, 39001, 39140, 39152, 41376, 41402, 42127-42134, 42238.1, 44200, 46111, 48900, 51510.

5. California Government Code §§ 910, 970 subd. (c), 50075, 53313, 53313.5.

6. Ohio Statutes – Revised Code §§ 133.06, 133.14, 2744.081, 5705.02, 5705.194, 5705.21, 5748.02.

STATEMENT OF THE CASE

At the commencement of the 1988-1989 school year the District removed Belanger from her position as school principal and reassigned her as a classroom teacher. The District did so because Belanger had performed poorly as a principal.

On March 20, 1989, Belanger filed suit under 42 U.S.C. § 1983, alleging the District reassigned her on account of her gender and in retaliation for testifying against the District in a separate discrimination case. After the District moved for summary judgment based on Eleventh Amendment immunity, the District Court

ordered extensive discovery to obtain evidence regarding whether a judgment against the District would be paid out of state funds.

After discovery was completed, the District Court granted the District's motion for summary judgment, determining that, as a matter of law, the District is a state agency immune from suit under the Eleventh Amendment of the United States Constitution.

SUMMARY OF ARGUMENT

The Ninth Circuit correctly granted Eleventh Amendment immunity to Respondents. In *Mt. Healthy City School Board of Education v. Doyle*, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977), this court held that the determination of a school district's status as an arm of the state, for Eleventh Amendment purposes, turns on the application of state law. *Mt. Healthy* denied immunity to Ohio school districts based on the application of this law, primarily because of an Ohio school district's fiscal autonomy.

In *Belanger v. Madera Unified School District*, 963 F.2d 248 (9th Cir. 1992), the Ninth Circuit granted immunity to Respondent School District. In doing so, the Court resolved in Respondent's favor the crucial issue of whether a judgment against the District would be satisfied out of state funds. School district funding in California is subject to the plenary control of the state. In addition, undisputed California law treats public education as a central governmental function; California school districts own property only as trustees for the state; and a school district's corporate status is best characterized as

an arm of the state performing a central governmental function.

Therefore, *Belanger* is consistent with *Mt. Healthy* since state regulation of school districts in Ohio is distinguishable from state regulation of California school districts.

Since this court has determined that Eleventh Amendment immunity depends on state law, no conflict does or could exist among the United States courts of appeals on this issue and Petitioner does not make any claim of inter-circuit conflict. Moreover, *Belanger* is consistent with other Ninth Circuit cases granting immunity to all levels of California's educational system and does not conflict with any opinions of this Court.

The Ninth Circuit's prior decision in *Padway v. Palches*, 665 F.2d 965 (9th Cir. 1982) does not conflict with *Belanger*, since *Padway* is distinguishable as an Equal Pay Act case and did not require application of Eleventh Amendment immunity analysis. Finally, *Belanger* is consistent with the views of other circuits which have examined similarly structured school systems. Therefore, in applying California law to California's kindergarten-high school ("K-12") school districts, the Ninth Circuit properly granted them Eleventh Amendment immunity.

ARGUMENT

I.

THE NINTH CIRCUIT COURT OF APPEALS CORRECTLY CONCLUDED THAT CALIFORNIA SCHOOL DISTRICTS ARE ENTITLED TO ELEVENTH AMENDMENT IMMUNITY

Respondents contend that review should not be granted since no conflict exists among the courts of appeal and review of a case presenting an identical issue was previously rejected by this Court.

A. No Conflict Exists Among The United States Courts Of Appeal Regarding The Issue Of Eleventh Amendment Immunity.

This court has determined that the question of "state agency" status for Eleventh Amendment immunity purposes turns on the laws of the state in question. *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 at 280. Some school districts, like those in California, may be entitled to immunity, while other school districts, like those in Ohio, may not. *Mt. Healthy*, 429 U.S. 274, 280.[1] This is not a conflict but rather a reflection of variations in law from state to state.

This rule of law inherently precludes a conflict among circuits. Therefore, review of this case is not appropriate since it would not resolve a conflict among the circuit courts of appeal.

---

[1] See Section IV, *infra*, for an analysis of federal cases granting school districts of other states with Eleventh Amendment immunity.

B. Review Of A Case Presenting An Identical Issue Was Rejected By This Court In 1989.

In *Mitchell v. Los Angeles Community College District*, 861 F.2d 198 (9th Cir. 1988), *cert. den.* 490 U.S. 1081, 109 S.Ct. 2102, 104 L.Ed.2d 663 (1989) a California community college district was granted to Eleventh Amendment immunity from a 42 U.S.C. § 1983 suit. This Court denied review. 490 U.S. 1081, 109 S.Ct. 2102, 104 L.Ed.2d 663 (1989).

The identical issue is presented here except the District is a K-12 rather than a community college district. The state's authority to create and organize K-12 school districts derives from the same constitutional provision as the state's authority to create and organize community college districts. Cal Const. art. 9, § 14. In all relevant respects, the constitutional and statutory provisions governing community college and school districts are virtually identical. Petitioner has not, and cannot, offer any reason why school districts should be treated differently than community college districts for purposes of the Eleventh Amendment. Since the decision below simply treats its K-12 and community colleges alike, review by this Court would serve no purpose.

II.

BELANGER IS CONSISTENT WITH OTHER NINTH CIRCUIT CASES

Petitioner asserts that the Ninth Circuit's opinion of April 29, 1992, is in conflict with *Padway v. Palches*, 665 F.2d 965. The Ninth Circuit obviously does not agree with this contention since it denied a rehearing en banc, and

Belanger's Petition for Rehearing was based principally upon the alleged conflict between *Padway* and *Belanger*. Moreover, an alleged conflict between Ninth Circuit decisions does not compel review by this Court.

A. *Padway v. Palches* Was Not Based On The Same Claims as *Belanger*.

In *Padway*, an elementary school principal alleged sex discrimination and filed suit under Title VII of the Civil Rights Act, 42 U.S.C. §§ 1983 and 1985 and the Equal Pay Act, 29 U.S.C. § 206 subd. (d). Although somewhat factually similar, *Padway* neither conflicts with nor controls *Belanger*. *Padway* is an Equal Pay Act case where an Eleventh Amendment analysis of a § 1983 claim is not relevant. Additionally, *Padway* only involved declaratory relief and never raised the issue of whether a monetary judgment against a school district would be paid from state funds. The Ninth Circuit also declined to rely upon *Padway* even in *Mitchell*.

1. Unlike 42 U.S.C. § 1983, Eleventh Amendment Immunity Has Been Legislatively Abrogated For Equal Pay Act Cases.

A fundamental principle of Eleventh Amendment jurisprudence is that Congress may abrogate state immunity. To do so, Congress must give "clear and positive indicia of intent to subject a state to suit in federal court." *Quern v. Jordan*, 440 U.S. 332 at 345, 99 S.Ct. 1139 at 1147, 59 L.Ed.2d 358 (1979). The Equal Pay Act, 29 U.S.C. § 206 subd. (d), is part of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, the "FLSA". In 1974, Congress

amended the FLSA to specifically authorize employee suits "against any employer (including a public agency) in any federal or state court of competent jurisdiction . . . " 29 U.S.C. § 216 subd. (b).

Courts have long recognized that Congress abrogated Eleventh Amendment immunity in Title VII suits. *Fitzpatrick v. Bitzer*, 427 U.S. 445, 96 S.Ct. 2666, 49 L.Ed.2d 614 (1976). Since Title VII and the Equal Pay Act are both expressly designed to prohibit discriminatory compensation to employees on the basis of sex, federal courts have uniformly held that Congress' 1974 FLSA Amendment intended to abrogate Eleventh Amendment immunity for causes of action under the Equal Pay Act.[2] Since there is no Eleventh Amendment immunity under the Equal Pay Act, *Padway* did not analyze whether school districts are state agencies.

2. *Padway* Did Not Involve a Claim Against State Funds.

In addition to being distinguishable as an Equal Pay Act case, *Padway*'s § 1983 claim did not present a question of sovereign immunity under the Eleventh Amendment since "the only relief sought under § 1983 is declaratory relief." *Padway*, 665 F.2d 965 at 968. Therefore, *Padway*'s

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[2] Federal law is clear that the 1974 amendment to the Equal Pay Act constitutes an abrogation of Eleventh Amendment immunity. *Ende v. Board of Regency of Universities*, 757 F.2d 176 at 177, n. 3 (7th. Cir. 1985); *Jacobs v. College of William and Mary*, 495 F.Supp. 183 at 186, n. 4, (E.D. Vir. 1980), *cert. den.* 454 U.S. 1033, 102 S.Ct. 572 (1981); *Billings v. Wichita State University*, 557 F.Supp. 1348 at 1351 (D. Kan. 1983).

§ 1983 claim could have had no impact upon state funds, the key factor in an Eleventh Amendment determination. *Jackson v. Hayakawa*, 682 F.2d 1344 at 1350 (9th Cir. 1982).

3. *Padway* Did Not Apply The Ninth Circuit's Five Part Test To Determine Eleventh Amendment Immunity.

Petitioner argues that *Padway* contradicts *Belanger* since *Padway* cites *Mt. Healthy*, 429 U.S. 274. Because the question of a California school district's Eleventh Amendment status under section 1983 was not at issue in *Padway*, the Ninth Circuit's one sentence reference to *Mt. Healthy* is superfluous. The Ninth Circuit's five-part[3] test to determine a state agency status was not used in *Padway*. *Padway* simply cited *Mt. Healthy* notwithstanding the meaninglessness of such a citation since the same conclusion is compelled by legislative abrogation of Eleventh Amendment immunity in Equal Pay Act cases. The *Padway* court's citation of *Mt. Healthy* does not compel the conclusion that California school districts are not entitled to Eleventh Amendment immunity. For these reasons, *Padway* does not conflict with *Belanger*.

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[3] The five part test consists of: (1) whether a money judgment would be satisfied out of state funds, (2) whether the entity performs central governmental functions, (3) whether the entity may sue and be sued, (4) whether the entity has the power to take property in its own name or only the name of the state, and (5) the corporate status of the entity. *Belanger*, 963 F.2d 248 at 250-251.

B. *Belanger* Is Consistent With The Ninth Circuit's Grant Of Immunity To All Levels Of California's Educational System.

Petitioner characterizes the *Belanger* opinion as an "unprecedented opinion of the Court of Appeals for the Ninth Circuit." (Petition at 8.) However the *Belanger* decision merely makes uniform the Ninth Circuit's application of Eleventh Amendment immunity to all levels of California's educational system.

In California, the State Department of Education and the State Superintendent of Public Instruction have been accorded Eleventh Amendment immunity. *Alexopulos v. San Francisco Unified School District*, 817 F.2d 551 (9th Cir. 1987) and *Los Angeles Branch NAACP v. Los Angeles Unified School District*, 714 F.2d 946 (9th Cir. 1983), *cert. den.* 467 U.S. 1209, 104 S.Ct. 2398 (1984). The University of California has Eleventh Amendment immunity, *Vaughn v. Regents of the University of California*, 504 F.Supp. 1349 (E.D. Cal. 1981), as does the California State University system. *Jackson v. Hayakawa*, 682 F.2d 1344. Community college districts have also been afforded immunity. *Mitchell*, 861 F.2d 198; *Stones v. Los Angeles Community College District*, 572 F.Supp. 1072 (C.D. Cal. 1983) *aff'd* 796 F.2d 270 (9th Cir. 1985); and, *Sosa v. Hiraoka*, 714 F.Supp. 1100 (E.D. Cal. 1988), *reversed on other grounds*, 920 F.2d 1451 (9th Cir. 1990).

In *Belanger*, the Ninth Circuit simply applied its five part test to bring K-12 school districts under the umbrella of Eleventh Amendment immunity. The *Belanger* decision is not "unprecedented."

III.

MT. HEALTHY SUPPORTS THE NINTH CIRCUIT'S ANALYSIS OF *BELANGER*

Petitioner argues that *Mt. Healthy*, 429 U.S. 274 conflicts with *Belanger*. (Petition at 8.) However, *Belanger* is consistent with *Mt. Healthy*, which clearly states that an agency's status for Eleventh Amendment purposes must be defined by state law. 429 U.S. at 280.[4]

Mt. Healthy held only that Ohio school districts, under Ohio law, were not arms of the state; it did not hold that all school districts of all states must be denied immunity. *Belanger* acknowledged *Mt. Healthy*, but found "the school district in this case is easily distinguishable from the Ohio school district in *Mt. Healthy*." *Belanger*, 963 F.2d 248 at 254.

In *Mt. Healthy*, this Court found Ohio school districts receive "some guidance" from the State Board of Education and receive a "significant amount of money from the state."[5] *Id.* at p. 281. When balanced against an Ohio school district's fiscal autonomy due to their ability to raise local revenue through bonds and taxes, the court

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[4] In accord, *Mitchell v. Los Angeles Community College District*, 861 F.2d 198 at 201; *Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345 at 1349 (9th Cir. 1978) *aff'd* 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d 413 (1983); *Jackson v. Hayakawa*, 682 F.2d 1344 at 1350; *Stones v. Los Angeles Community College District*, 572 F.2d 1072 at 1076; *Austin v. State Industrial Ins. System*, 939 F.2d 676 at 678-679 (9th Cir. 1991) *aff'd* 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d 413 (1983).

[5] In California, school districts are subject to extensive and comprehensive state regulation. See footnote 8.

tipped the balance against immunity for Ohio school districts.

Conversely, in *Mitchell*, 861 F.2d 198, and in *Stones*, 572 F.Supp. 1072 *aff'd* 796 F.2d 270, the Ninth Circuit held that California community college districts are state agencies for Eleventh Amendment purposes primarily because they lack fiscal independence. Given Petitioner's failure to show any distinction between California K-12 school districts and California community college districts, *Mitchell* compels the result reached in *Belanger*. School districts, like community college districts, pay judgments out of state funds, perform a central governmental function, and hold property only as a trustee for the state. Most importantly, they are financed by the state through a state controlled formula and do not have fiscal autonomy.

A. State Regulation Of School Districts In Ohio Is Distinguishable From State Regulation Of California School Districts.

In *Mt. Healthy*, 429 U.S. 274, this Court denied immunity to Ohio school districts precisely because Ohio school districts are not subject to a state controlled funding system. A board of education in Ohio, as the *Mt. Healthy* court noted, may levy taxes annually on real and personal property to pay current operating expenses, including court judgments, without any required approval of the electorate, with only a percentage limitation. This "inside millage" is an unrestricted power of the district. Ohio Revised Code § 5705.02.

Levies outside of this percentage limitation can be approved with a majority vote of the electorate and are referred to as "voted millage" or "outside millage." Ohio Revised Code, § 5705.21. Outside millage may be used to pay operating expenses, including court judgments, or for permanent improvements. In addition, an Ohio school district may levy an income tax for general operating purposes and permanent improvements. Ohio Revised Code, § 5748.02. Limited period tax levies designed to produce specific amounts of revenue are available upon the declaration of an "emergency" by the local board of education. Ohio Revised Code, §§ 5705.194, *et seq.*

Ohio's uniform bond law also authorizes school districts to issue bonds or notes for the payment of final court judgments, the expenses of litigation or the settlement of claims, Ohio Revised Code, § 133.14, to pay the cost of establishing and maintaining a self-insurance reserve or a joint insurance pool, Ohio Revised Code, § 2744.081, and to meet certain expenses incurred as a result of specified emergencies. Ohio Revised Code, § 133.06(F).

In sum, Belanger's argument that the "same factors which made school districts in Ohio subject to suit under *Mt. Healthy* apply in California" is simply incorrect. (Petition at 14.) *Mt. Healthy* does not compel a contrary result since Ohio law does not treat Ohio school districts in the same manner as school districts are treated under California law, particularly with regard to school financing.

B. A Judgment In Belanger's Favor Would Be Paid Out Of State Funds.

The source of funds available to pay a judgment against an agency is "the most important single factor in determining whether the Eleventh Amendment bars federal jurisdiction." *Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345 at 1349 (9th Cir. 1981), citing *Edelman v. Jordan*, 415 U.S. 651, 668, 94 S.Ct. 1347, 1358, 39 L.Ed.2d 662 (1974). This factor represents the crucial distinction between California and Ohio school districts.[6]

California school districts do not have the power to levy local property taxes for general fund purposes, such as paying judgments. Only with a two-thirds vote of the electorate can property taxes be increased and such additional revenue can only be used for acquisition and improvement of real property. Cal. Const. art. 13(A), § 1(b). Moreover, bonded indebtedness, whether incurred through general obligation bonds, certificates of participation, or otherwise cannot be used as general fund

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[6] It is a mischaracterization of school funding laws to contend that the use of revenue limit monies is "unrestricted", since each school district must comply with the state laws affecting nearly every aspect of a school district's operations. (Petition for Writ of Certiorari at 7.) While some discretion is exercised by the governing board of each school district, as a practical matter, mandated expenditures are the overwhelming majority of a school district's budget. As the California Supreme Court recently noted, "the volume and scope of state regulation indicate the pervasive role the State itself has chosen . . . " *Butt v. State of California*, No. S020835, 93 Calif. Daily Opinion Service ("C.D.O.S.") 39, 43; 92 Cal. LEXIS 6139 (California Supreme Court, December 31, 1992). Therefore, a school district's discretion and control regarding remaining funds is limited.

monies to pay judgments. Cal. Gov't. Code, §§ 53313, 53313.5, 50075; Cal. Educ. Code, § 15100; Cal. Const. art. 13(A), § 1(b). In California, only the state can grant an inflationary increase in revenue to schools. Cal. Educ. Code, § 42238.1. Even when voters demand a larger share of the state budget for education, the legislature has the power to withhold funds. Cal. Const., art. 16, §§ 8(b) and (h).

California's system for financing its public schools is a state mandated and state controlled revenue limit system which has been created, as the Ninth Circuit correctly notes, as a result of the *Serrano* equalization requirements and the passage of Proposition 13.[7]

The California Supreme Court, in *Serrano v. Priest*, 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241 (1971), *cert. den.* 432 U.S. 907 (1977) (*Serrano* I), required equalized funding for all students, striking down a school financing scheme too dependent on local property taxes. This decision led the California legislature to impose a state controlled revenue limit for each district. In *Serrano v. Priest*, 18 Cal.3d 728, 135 Cal.Rptr. 345, 557 P.2d 929 (1976) (*Serrano* II), the California Supreme Court required the state to assume even greater control over school funding by preventing wealthier districts from raising too much local

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[7] The California legislature did not, in 1980 (Petition at 12), "decide that a local school district is a public entity and not a state agency . . . " Directly contrary to Belanger's theory, the California Supreme Court recently held that school districts are agencies of the state. *Butt v. State of California*, No. S020835, 93 C.D.O.S. 39, 92 Cal.LEXIS 6139 (California Supreme Court, December 31, 1992).

revenue. 557 P.2d 957, 958. A 1978 statewide initiative, commonly referred to in California as Proposition 13, helped achieve the results compelled by *Serrano* I and *Serrano* II, by preventing property tax increases without a two-thirds vote of the electorate. Cal. Const. art. 13A, §§ 1-7. Therefore, under Proposition 13, the amount of local taxes that can be levied and the percentage that is received by the school districts is now determined by the state legislature.

Since the early 1970s there has been strict state control over school funding. The state's school funding system was recently summarized by the California Supreme Court as follows:

> The legislature has attempted to equalize school district funding . . . by use of a base revenue limit for each district. . . . Each district has a "base revenue limit" per unit of average daily attendance. The base revenue limit for any district includes the amount of property tax revenues a district can raise, with other specific local revenues, coupled with an equalization payment by the state, thus bringing each district into a rough equivalency of revenues. *Butt v. State of California*, No. S020835, 93 C.D.O.S. 39, 41, n. 11, 92 Cal.LEXIS 6139, (California Supreme Court, December 31, 1992).

The extent of state control over school funding is well-illustrated in *Butt v. State of California*, where the state was obliged to "bail out" the financially strapped Richmond Unified School District after it prematurely exhausted its revenue limit for the year. In *Butt*, the California Supreme Court held that "the California Constitution makes public education uniquely a fundamental

concern of the state . . . the state itself bears the ultimate authority and responsibility . . . " *Butt v. State of California*, 93 C.D.O.S. 42.[8]

So great is the state's control of public school financing that the State Superintendent of Public Instruction has the power to approve or disapprove a school district's budget and, in the event of disapproval, to require the County Superintendent to "monitor and review the operation of the district and to stay and rescind actions that are inconsistent with that budget." Cal. Educ. Code §§ 42127-42134.

In light of the state's plenary authority to control local school district finances, *Belanger*'s argument that a judgment could be paid from local property taxes becomes irrelevant. (Petition at 8.) As the Ninth Circuit's decision correctly noted, California's revenue limit system so commingles local and state funds pursuant to a state controlled formula that any use of the commingled funds constitutes a use of state funds. *Belanger*, 963 F.2d 248 at 252.

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[8] See California Constitution art. 9, § 6; and in the California Educ. Code, § 39152 (State control of special education and its funding); § 39001 (State control of school sites); §§ 41402 and 44200 (State control of staffing rations and teacher certification); § 39140 (State control over design and construction of buildings); § 41376 (State class size standards); §§ 48900 and 51510 (State control over student discipline and textbooks); §§ 46111 (State control over number of school days); Ed. Code § 35720 (State control over organization of school district); § 37252 (mandates summer school), to name a few. For additional examples of State control of California's public schools, see *Butt v. State of California*, 93 C.D.O.S 42 at 43-44.

Belanger also argues that some "basic aid" districts in California receive 100% of their revenue limit entitlement from local property taxes, implying that a judgment against such districts would not be tantamount to a judgment against the state.[9] (Petition at 6-7.) This point is irrelevant because the Madera Unified School District is not a basic aid district. The overwhelming majority of school districts in California are not basic aid districts. Moreover, even the existence of "basic aid districts" results from a state controlled revenue limit system. Irrespective of the percentage of local property tax revenues which are eventually commingled with funds allocated from the state, California's funding system for school districts is clearly a state controlled system.

C. In California, School Districts Are Properly Considered Arms of the State.

The Ninth Circuit has correctly determined that "California public schools have long been treated as state agencies under California law." *Belanger*, 963 F.2d 248 at 253. As recently as December, 1992 the California Supreme Court reaffirmed this rule noting:

> Public education is an obligation which the state assumed by the adoption of the Constitution (citations omitted). This system of public schools, although administered by local districts

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[9] The manner in which judgments are paid is also discussed by Petitioner, with the relevance of that subject being, at best, unclear. The issue is whether a judgment in Belanger's favor would be paid out of state funds, not who would "cut the check" and how. (Petition at 7-8, 16.)

> created by the legislature, is one system . . . applicable to all schools . . . " (citations omitted). . . . "Management and control of the public schools [is] a matter of state, [not local,] care and supervision . . . " (citations omitted). The legislature's "plenary" power over public education is subject only to constitutional restriction (citations omitted). Local districts are the state's agents for the local operation of the common school system (citations omitted) and the state's ultimate responsibility for public education cannot be delegated to any other entity (citations omitted). *Butt v. State of California*, 93 C.D.O.S. 39 at 41.

Petitioner disputes this contention, citing Government Code § 970 subd. (c), a portion of the California's Tort Claims Act, California Government Code, § 910 *et seq.* (Petition at 10-12.) First, although Government Code § 970 subd. (c) defines a school district as a "local public entity," nothing in the Tort Claims Act affects the characterization of a school district's money as "state money." The Tort Claims Act only affects the pre-litigation claims process; it tells a plaintiff where to file a claim, it does not affect the source of funds used to pay a claim. As the California Supreme Court noted, school districts may be treated as local public entities for some purposes and not for others. *Butt v. State of California*, 93 C.D.O.S. 39 at 41.

The Tort Claims Act also applies to California's community college system, yet the Ninth Circuit nevertheless granted Eleventh Amendment immunity to California's community colleges. *Mitchell*, 861 F.2d 198 and *Stones*, 572 F.Supp. 1072. Therefore, California's Tort Claims Act is

immaterial to determining whether a school district is entitled to Eleventh Amendment immunity.

D. Pervasive State Regulation Of California's School Districts Distinguishes California's School Districts From Its Cities and Counties.

Belanger contends that if California school districts are granted Eleventh Amendment immunity then California's cities, counties and other public entities may soon acquire immunity as well.[10] (Petition at 14.) According to California law, its school districts are distinguishable from its cities and counties, for Eleventh Amendment purposes, for numerous reasons.

First, the State of California is not constitutionally responsible for the conduct of municipal affairs, whereas it is ultimately responsible for public education. *Butt v. State of California*, 93 C.D.O.S. 39. Secondly, cities and counties have broad police powers, school districts do not. Third, the state has not imposed a state controlled financing system on cities and counties comparable to the revenue limit system imposed on California school districts. Fourth, there is no constitutional requirement that cities or counties be funded equally. They are fiscally autonomous and their budgets are not subject to state review. Fifth, cities and counties have a multitude of revenue generating mechanisms available which school

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[10] In support of this contention, Petitioner cites *Moor v. County of Alameda*, 411 U.S. 693 at 717-721, 93 S.Ct. 1785, 36 L.Ed.2d 596 (1973) where this Court's holding made clear that such a result was not proper. (Petition at 15.)

districts do not, such as utility charges, sales taxes, and user fees. Cal. Const. art. 9, § 5 – § 7; *Butt v. State of California*, 93 C.D.O.S. 39.

California law treats cities and counties in a manner distinguishable from school districts. Accordingly, Belanger's fear that a grant of immunity to California school districts may ultimately extend to cities or counties is unfounded.[11]

IV.

BELANGER IS CONSISTENT WITH THE VIEWS OF OTHER CIRCUITS WHICH HAVE EXAMINED SIMILARLY STRUCTURED SCHOOL SYSTEMS.

The Ninth Circuit is far from being a lone wolf in its holdings in *Belanger*, 963 F.2d 248 and *Mitchell*, 861 F.2d 198. Other circuits have found Eleventh Amendment immunity available to similarly situated school districts.

Martinez v. Board of Education of Taos Municipal School District, 748 F.2d 1393 (10th Cir. 1984) upheld Eleventh Amendment immunity for a New Mexico School District. *Martinez* examined a number of factors, including control over content of instruction, teacher licensing, graduation

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[11] Petitioner's concern that "the courthouse door will be shut on those hundreds of thousands of local school district employees . . . " is also not well placed. (Petition at 16.) Even after *Belanger*, 963 F.2d 248, relief remains available under state laws and constitutions, Title VII, the Equal Pay Act, the Federal Constitution and, on a prospective basis against state officials acting in their official capacity, under 42 U.S.C. § 1983.

standards and promulgation of regulations. Likewise, California school districts are controlled by the state.[12]

Martinez found state control over New Mexico school district budgets is "complete" because it is controlled at the state level. *Id.* at 1395. Acknowledging a "small amount of local funds," *Martinez* allowed Eleventh Amendment immunity because factors showing local control were "overwhelmed by the pervasive state authority over education in the state originating with the state constitution." 748 F.2d at 1396.[13]

Utah school districts have also been granted Eleventh Amendment immunity. *Martinez v. Board of Education of Emery County School District*, 724 F.Supp. 857 (D. Utah 1989). *Emery County* compared Utah districts with those of Ohio, following the analysis set forth in *Mt. Healthy*, 429 U.S. 274 and held that the local school boards in Utah functioned as arms of the state. Like California, Utah's constitution vested general control and supervision of education in the state, as well as considerable control for school funding. *Emery County*, 724 F.Supp. at 861. A number of school districts in other states have Eleventh Amendment immunity. There is nothing to suggest that

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[12] See footnote 8.

[13] Other cases concerning New Mexico school districts have reached the same conclusion. *Garcia v. Board of Education of the Socorro Consolidated School District*, 777 F.2d 1403 (10th Cir. 1985) *cert. den.* 479 U.S. 814, 107 S.Ct. 66 (1986); *Maestas v. Board of Education of the Mora Independent School District*, 749 F.2d 591 (10th Cir. 1984).

the Ninth Circuit's opinion in *Belanger* is an unsupported aberration under existing legal authority.[14]

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[14] A variety of school districts have been found entitled to Eleventh Amendment immunity: Pennsylvania: *Fleming v. Upper Dublin Public School District*, 141 F.Supp. 813 (E.D. Penn. 1956); Iowa: *Wihtol v. Crow*, 309 F.2d 777 (8th Cir. 1962) *reh'g. den.* January 5, 1963; Virginia: *O'Neill v. Early*, 208 F.2d 286 (4th Cir. 1953); and *DeLevay v. Richmond County School Board*, 284 F.2d 340 (4th Cir. 1960). Some courts have denied immunity to some school districts based on that state's law. *Hutchison v. Lake Oswego School District*, 519 F.2d 961, 966 (9th Cir. 1975) refusing to grant Eleventh Amendment immunity to Oregon school districts. *Mt. Healthy*, 429 U.S. 274, denied immunity to Ohio districts.

CONCLUSION

For the foregoing reasons, the Respondents submit that the Ninth Circuit's decision of April 29, 1992 was correct and respectfully request that the Petition for a Writ of Certiorari be denied.

Dated: January 23, 1993

Respectfully submitted,

LOZANO SMITH
SMITH WOLIVER & BEHRENS
MICHAEL E. SMITH
•ELLEN M. JAHN
2444 Main Street, Ste. 260
Fresno, CA 93721
(209) 445-1352
Attorneys for Respondents

United States Constitution
Amendment XI

AMENDMENT XI [1798]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

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28 U.S.C. Section 1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

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29 U.S.C. Section 201

This chapter may be cited as the "Fair Labor Standards Act of 1938".

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29 U.S.C. Section 206(d)

(d)(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided,* That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any

agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

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29 U.S.C. Section 216(b)

(b) Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a

reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefore under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

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42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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42 U.S.C. Section 1985

Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grant or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course

of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived

may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

California Constitution Article 9, Section 5

Sec. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

California Constitution Article 9, Section 6

Sec. 6. Each person, other than a substitute employee, employed by a school district as a teacher or in any other position requiring certification qualifications shall be paid a salary which shall be at the rate of an annual salary of not less than twenty-four hundred dollars ($2,400) for a person serving full time, as defined by law.

The Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction

of any authority other than one included within the Public School System.

The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year, an amount not less than one hundred eighty dollars ($180) per pupil in average daily attendance in the kindergarten schools, elementary schools, secondary schools, and technical schools in the Public School System during the next preceding fiscal year.

The entire State School Fund shall be apportioned in each fiscal year in such manner as the Legislature may provide, through the school districts and other agencies maintaining such schools, for the support of, and aid to, kindergarten schools, elementary schools, secondary schools, and technical schools except that there shall be apportioned to each school district in each fiscal year not less than one hundred twenty dollars ($120) per pupil in average daily attendance in the district during the next preceding fiscal year and except that the amount apportioned to each school district in each fiscal year shall be not less than twenty-four hundred dollars ($2,400).

Solely with respect to any retirement system provided for in the charter of any county or city and county pursuant to the provisions of which the contributions of, and benefits to, certificated employees of a school district who are members of such system are based upon the proportion of the salaries of such certificated employees contributed by said county or city and county, all amounts apportioned to said county or city and county, or to school districts therein, pursuant to the provisions of this section shall be considered as though derived from

county or city and county school taxes for the support of county and city and county government and not money provided by the State within the meaning of this section.

California Constitution, Article 9, Section 7

Sec. 7. The Legislature shall provide for the appointment or election of the State Board of Education and a board of education in each county or for the election of a joint county board of education for two or more counties.

California Constitution, Article 9, Section 14

Sec. 14. The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and community college districts, of every kind and class, and may classify such districts.

The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.

California Constitution Article 13A, Section 1

Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent

(1%) of the full cash value of such property. The one percent (1%) tax *shall* be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on *any of the following:*

(1) Any indebtedness approved by the voters prior to July 1, 1978 * * * .

(2) Any bonded indebtedness, *not subject to paragraph (3),* for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the * * * voters voting on the proposition.

(3) Any bonded indebtedness incurred by a school district, county office of education, or community college district for the construction, reconstruction, or rehabilitation of school facilities, including the furnishing and equipping thereof, or the acquisition of real property therefore, approved by a majority of the voters on the proposition on or after the day after the date of the election at which Assembly Constitutional Amendment 6 of the 1991-92 Regular Session[1] is approved.

(c) No ad valorem tax levied pursuant to subdivision (b) shall be deemed a special tax for purposes of this article.

(d) Section 65997 of the Government Code, as that section read on the effective date of this subdivision, has no force or effect.

California Constitution Article 16, Section 8

(a) From all state revenues there shall first be set apart the * * * *moneys* to be applied by the state for support of the public school system and public institutions of higher education.

(b) Commencing with the * * * *1990-91* fiscal year, the * * * *moneys* to be applied by the state for the support of school districts and community college districts shall be not less than the greater of *the following amounts*:

(1) The amount which, as a percentage of * * * General Fund revenues which may be appropriated pursuant to Article * * * *XIII B*, equals the percentage of * * * General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87 * * * .

(2) The amount required to ensure that the total allocations to school districts and community college districts from * * * General Fund proceeds of taxes appropriated pursuant to Article * * * *XIII B* and allocated local proceeds of taxes shall not be less than the total amount from these sources in the prior *fiscal* year, *excluding any revenues allocated pursuant to subdivision (a) of Section 8.5,* adjusted for * * * *changes* in enrollment * * * and adjusted for *the* * * * *change* in the cost of living pursuant to* * * *paragraph (1) of subdivision (e) of Section 8 of Article XIII B. This paragraph shall be operative only in a fiscal year in which the percentage growth in California per capita personal income is less than or equal to the percentage growth in per capita General Fund revenues plus one half of one percent.*

(3)(A) The amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall equal the total amount from these sources in the prior fiscal year, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment and adjusted for the change in per capita General Fund revenues.

(B) In addition, an amount equal to one-half of one percent times the prior year total allocations to school districts and community colleges from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes, excluding any revenues allocated pursuant to subdivision (a) of Section 8.5, adjusted for changes in enrollment.

(C) This paragraph (3) shall be operative only in a fiscal year in which the percentage growth in California per capita personal income in a fiscal year is greater than the percentage growth in per capita General Fund revenues plus one half of one percent.

(c) In any fiscal year, if the amount computed pursuant to paragraph (1) of subdivision (b) exceeds the amount computed pursuant to paragraph (2) of subdivision (b) by a difference that exceeds one and one-half percent of General Fund revenues, the amount in excess of one and one-half percent of General Fund revenues shall not be considered allocations to school districts and community colleges for purposes of computing the amount of state aid pursuant to paragraph (2) or (3) of subdivision (b) in the subsequent fiscal year.

(d) In any fiscal year in which school districts and community college districts are allocated funding pursuant to

paragraph (3) of subdivision (b) or pursuant to subdivision (h), they shall be entitled to a maintenance factor, equal to the difference between (1) the amount of General Fund moneys which would have been appropriated pursuant to paragraph (2) of subdivision (b) if that paragraph had been operative or the amount of General Fund moneys which would have been appropriated pursuant to subdivision (b) had subdivision (b) not been suspended, and (2) the amount of General Fund moneys actually appropriated to school districts and community college districts in that fiscal year.

(e) The maintenance factor for school districts and community college districts determined pursuant to subdivision (d) shall be adjusted annually for changes in enrollment, and adjusted for the change in the cost of living pursuant to paragraph (1) of subdivision (e) of Section 8 of Article XIII B, until it has been allocated in full. The maintenance factor shall be allocated in a manner determined by the Legislature in each fiscal year in which the percentage growth in per capita General Fund revenues exceeds the percentage growth in California per capita personal income. The maintenance factor shall be reduced each year by the amount allocated by the Legislature in that fiscal year. The minimum maintenance factor amount to be allocated in a fiscal year shall be equal to the product of General Fund revenues from proceeds of taxes and one-half of the difference between the percentage growth in per capita General Fund revenues from proceeds of taxes and in California per capita personal income, not to exceed the total dollar amount of the maintenance factor.

(f) For purposes of this section, "changes in enrollment" shall be measured by the percentage change in average daily attendance. However, in any fiscal year, there shall be no adjustment for decreases in enrollment between the prior fiscal

year and the current fiscal year unless there have been decreases in enrollment between the second prior fiscal year and the prior fiscal year and between the third prior fiscal year and the second prior fiscal year.

* * * *(h) Subparagraph (B) of paragraph (3) of subdivision (b) may be suspended for one year only when made part of or included within any bill enacted pursuant to Section 12 of Article IV. All other* * * * provisions of subdivision (b) * * * may be suspended for one year by the enactment of an urgency statute pursuant to Section 8 of Article IV, provided that * * * *the* urgency statute * * * may *not* be made part of or included within any bill enacted pursuant to Section 12 of Article IV.

California Education Code Section 15100

Except as otherwise provided by law, the governing board of any school district or community college district may, when in its judgment it is advisable, and shall, upon a petition of the majority of the qualified electors residing in the school district or community college district, order the county superintendent of schools to call an election and submit to the electors of the district the question whether the bonds of the district shall be issued and sold for the purpose of raising money for the following purposes:

(a) The purchasing of school lots.

(b) The building or purchasing of school buildings.

(c) The making of alterations or additions to the school building or buildings other than as may be necessary for current maintenance, operation, or repairs.

(d) The repairing, restoring, or rebuilding of any school building damaged, injured, or destroyed by fire or other public calamity.

(e) The supplying of school buildings and grounds with furniture, equipment or necessary apparatus of a permanent nature.

(f) The permanent improvement of the school grounds.

(g) The refunding of any outstanding valid indebtedness of the district, evidenced by bonds, or of state school building aid loans.

(h) The carrying out of the projects or purposes authorized in Section 39613 or 81613.

(i)The purchase of schoolbuses the useful life of which is at least 20 years.

(j) The demolition or razing of any school building with the intent to replace it with another school building, whether in the same location or in any other location.

Any one or more of the purposes enumerated, except that of refunding any outstanding valid indebtedness of the district evidenced by bonds, may, by order of the governing board entered in its minutes, be united and voted upon as one single proposition.

California Education Code Section 35720

Each county committee on school district organization shall, under the direction of the State Board of Education, formulate plans and recommendations for the organization of the districts in the county or any portion thereof including, if appropriate, a portion of one or more adjacent counties.

California Education Code Section 37252

(a) The governing board of each district maintaining any or all of grades 7 to 12, inclusive, shall offer summer school instructional programs for pupils enrolled in grades 7 to 12, inclusive, who were assessed as not meeting the district's adopted standards of proficiency in basic skills pursuant to Article 2.5 (commencing with Section 51215) of Chapter 2 of Part 28.

For purposes of this section, a pupil shall be considered to be enrolled in a grade immediately upon completion of the preceding grade.

(b) The summer school programs shall also be offered to pupils who were enrolled in grade 12 during the prior school year after the completion of grade 12, and upon the successful completion of the summer program, these pupils may be reassessed for purposes of meeting the district's standards of proficiency.

California Education Code Section 39001

Prior to commencing the acquisition of real property for a new school site or an addition to an existing school site, the governing board of a school district shall evaluate the property at a public hearing using the site selection standards established by the State Department of Education pursuant to subdivision (b) of Section 39101. The governing board may direct the district's advisory committee established pursuant to Section 39296 to evaluate the property pursuant to these site selection standards and to report its findings to the governing board at the public hearing.

California Education Code Section 39140

(a) The Department of General Services under the police power of the state shall supervise the design and construction of any school building or , if the estimated cost exceeds twenty thousand dollars ($20,000), the reconstruction or alteration of or addition to any school building, to ensure that plans and specifications comply with the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, and to ensure that the work of construction has been performed in accordance with the approved plans and specifications, for the protection of life and property. Nothing in this section shall be construed to allow a school district to perform work with its own forces in excess of the limitations set forth in

Sections 39640 and 39649. In calculating the cost of any project of reconstruction or alteration of, or addition to, any school building for the purpose of determining the applicability of the rules and regulations adopted pursuant to this article and building standards published in Title 24 of the California Code of Regulations, the Department of General Services shall not include, as an element of that cost, any expenses of air-conditioning equipment or insulation materials for that building, or of installing the equipment or materials.

(b) Whenever repairs due to fire damage, not including any damage caused by wind or earthquake, must be made to any school building previously approved by the Department of General Services, the approved plans and specifications used in the original work under then existing rules, regulations, and building standards may be used without modification, providing all other provisions of this article are carried out.

(c) Notwithstanding any other provision of law, no school district shall be authorized to construct or reconstruct any school building, regardless of the source of funding, unless and until one of the following criteria has been met:

(1) The district architect has certified that the project satisfies the construction cost and allowable area standards prescribed by Chapter 22 (commencing with Section 17700) of Part 10.

(2) The governing board of the district has, by resolution, indicated the agreement of the district that any school building construction or reconstruction that

exceeds those construction cost and allowable area standards or any allowable building area computed for an attendance area pursuant to Section 17741 shall, in the event of the district's subsequent application for state funding for school facility construction, be deducted from the allowable building area for which the district would otherwise have been eligible, which restriction shall not be subject to waiver or exception, as may otherwise be provided by law, including, but not limited to, Section 17742.

If it is determined that, for any reason, a school district failed to comply with the requirement of this section, the district shall not be eligible for any additional building area pursuant to Section 17749 and may be denied any time priority established for the particular project pursuant to Section 17716.

California Education Code Section 39152

Except as provided in Section 18930 of the Health and Safety Code, the Department of General Services may from time to time make such rules and regulations as it deems necessary, proper, or suitable to carry out the provisions of this article.

The Department of General Services shall adopt and submit building standards for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code for the purposes described in this article.

California Education Code Section 41376

The Superintendent of Public Instruction, in computing apportionments and allowances from the State School Fund for the second principal apportionment, shall determine the following for the regular day classes of the elementary schools maintained by each school district:

(a) For grades 1 to 3, inclusive, he shall determine the number of classes, the number of pupils enrolled in each class, the total enrollment in all such classes, the average number of pupils enrolled per class, and the total of the numbers of pupils which are in excess of thirty (30) in each class.

For those districts which do not have any classes with an enrollment in excess of 32 and whose average size for all the classes is 30.0 or less, there shall be no excess declared. For those districts which have one or more classes in excess of an enrollment of 32 or whose average size for all the classes is more than 30, the excess shall be the total of the number of pupils which are in excess of 30 in each class having an enrollment of more than 30.

(b) For grades 4 to 8, inclusive, he shall determine the total number of pupils enrolled, the number of full-time equivalent classroom teachers, and the average number of pupils per each full-time equivalent classroom teacher. He shall also determine the excess if any, of pupils enrolled in such grades in the following manner:

(1) Determine the number of pupils by which the average number of pupils per each full-time equivalent classroom teacher for the current fiscal year exceeds the

greater of the average number of pupils per each full-time equivalent classroom teacher in all the appropriate districts of the state, as determined by the Superintendent of Public Instruction, for October 30, 1964, or the average number of pupils per each full-time equivalent classroom teacher which existed in the district on either October 30, 1964 or March 30, 1964, as selected by the governing board.

(2) Multiply the number determined in (1) above by the number of full-time equivalent classroom teachers of the current fiscal year.

(3) Reduce the number determined in (2) above by the remainder which results from dividing such number by the average number of pupils per each full-time equivalent teacher for October 30, 1964, as determined by the Superintendent of Public Instruction in (1) above.

(c) He shall compute the product obtained by multiplying the excess number of pupils, if any, under the provisions of subdivision (a) of this section by ninety-seven hundredths (0.97), and shall multiply the product so obtained by the ratio of statewide change in average daily attendance to district change in average daily attendance. Change in average daily attendance shall be determined by dividing average daily attendance in grades 1, 2 and 3 reported for purposes of the first principal apportionment of the current year by that reported for purposes of the first principal apportionment of the preceding year.

(d) If the school district reports that it has maintained, during the current fiscal year, any classes in which there were enrolled pupils in excess of thirty (30)

per class pursuant to subdivision (a) of this section, and there is no excess number of pupils computed pursuant to subdivision (b) of this section, he shall decrease the average daily attendance reported under the provisions of Section 41601 by the product determined under subdivision (c) of this section.

(e) If the school district reports that it has maintained, during the current fiscal year, no classes in which there were enrolled pupils in excess of thirty (30) per class determined pursuant to subdivision (a) of this section, and there is an excess number of pupils computed pursuant to subdivision (b) of this section, he shall make the following computation:

He shall compute the product obtained by multiplying the excess number of pupils computed pursuant to subdivision (b) of this section by ninety-seven hundredths (0.97) and shall multiply the product so obtained by the ratio of statewide change in average daily attendance to the district change in average daily attendance. He shall decrease the average daily attendance reported under the provisions of Section 41601 by the resulting product.

(f) If the school district reports that it has maintained, during the current fiscal year, any classes in which there were enrolled pupils in excess of thirty (30) per class determined pursuant to subdivision (a) of this section, and there is an excess number of pupils computed pursuant to subdivision (b) of this section, he shall make the following computation:

He shall add to the product determined under subdivision (c) of this section, the product determined under

subdivision (e) of this section and decrease the average daily attendance reported under the provisions of Section 41601 by this total amount.

The governing board of each school district maintaining elementary schools shall report for the fiscal year 1964-65 and each year thereafter the information required for the determination to be made by the Superintendent of Public Instruction under the provisions of this section in accordance with instructions provided on forms furnished and prescribed by the Superintendent of Public Instruction. Such information shall be reported by the school district together with, and at the same time as, the reports required to be filed for the second principal apportionment of the State School Fund. The forms on which the data and information is reported shall include a certification by each school district superintendent or chief administrative officer that the data is correct and accurate for the period covered, according to his best information and belief.

For purposes of this section, a "full-time equivalent classroom teacher" means an employee of an elementary, high school, or unified school district, employed in a position requiring certification qualifications and whose duties require him to teach pupils in the elementary schools of that district in regular day classes for the full time for which he is employed during the regular schoolday. In reporting the total number of full-time equivalent classroom teachers, there shall be included, in addition to those employees defined above, the full-time equivalent of all fractional time for which employees in positions requiring certification qualifications are required to devote to teaching pupils in the elementary schools of the

district in regular day classes during the regular school-day.

For purposes of this section, the number of pupils enrolled in each class means the average of the active enrollment in that class on the last teaching day of each school month which ends prior to April 15th of each school year.

The provisions of this section are not applicable to school districts with less that 101 units of average daily attendance for the current fiscal year.

Although no decreases in average daily attendance shall be made for the fiscal year 1964-65, reports are required to be filed under the provisions of this section, and the Superintendent of Public Instruction shall notify each school district the amount of the decrease in state allowances which would have been effected had such decrease in average daily attendance been applied.

The Superintendent of Public Instruction shall adopt rules and regulations which he may deem necessary for the effective administration of this section. Such rules and regulations may specify that no decrease in average daily attendance reported under the provisions of Section 41601 shall be made for a school district on account of large classes due to instructional television or team teaching, which may necessarily involve class sizes at periods during the day larger than the standard set forth in this section.

California Education Code Section 41402

For the purposes of this article, and subject to the provisions of Section 41402.1, the maximum ratios of administrative employees to each 100 teachers in the various types of school districts shall be as follows:

(a) In elementary school districts – 9.

(b) In unified school districts – 8.

(c) In high school districts – 7.

This section shall not apply to any school district which has only one school and one administrator.

California Education Code Section 42127.1

(a) Pursuant to subdivision (f) of Section 42127, upon the disapproval of a school district budget by the county superintendent, the county superintendent shall call for the formation of a budget review committee.

(b) The budget review committee shall be composed of three persons selected by the governing board of the school district from a list of candidates provided to the governing board by the Superintendent of Public Instruction. The list of candidates shall be composed of persons who have expertise in the management of a school district or county office of education. Their experience shall include, but not be limited to, the fiscal and educational aspects of local educational agency management.

(c) Notwithstanding subdivision (b) or any other provision of this article, with the approval of the Superintendent of Public Instruction and the governing board of the school district, the county superintendent of schools may select and convene a regional review committee, consisting of persons having the expertise described in that subdivision. The regional review committee shall operate in place of the budget review committee, in accordance with the provisions of this article governing budget review committees.

(d) Members of the committee shall be reimbursed by the State Department of Education for their services and associated expenses while on official business at rates established by the State Board of Education.

California Education Code Section 42128

If the governing board of any school district neglects or refuses to make a school district budget as prescribed by this article, the county superintendent of schools shall not make any apportionment of state or county school money for the particular school district for the current school year. *(Stats.1976, c. 1010, § 2.)*

California Education Code Section 42129

School districts and county offices of education shall transmit to the State Department of Education, on a

timely basis, all budget reports, prior year expenditure reports, qualified and negative financial status reports, program cost accounting reports, certifications, and audit reports as prescribed by subdivision (j) of Section 1240, subdivision (g) of Section 35035, Sections 1621, 1623, 35014, 41020, 42127, and 56730.5 and those reports used to calculate the first, second, and annual principal apportionments and special purpose apportionments for school districts and county offices of education. In the event that the reports are not submitted to the Superintendent of Public Instruction within 14 days after the submission date prescribed in the statute or specified by the Superintendent of Public Instruction, the Superintendent of Public Instruction may direct the county auditor to withhold payment of any stipend, expenses, or salaries to the district superintendent, county superintendent, or members of the governing boards, as appropriate. The withholding shall continue only until the delinquent reports have been submitted to the State Department of Education. If the county superintendent performs the functions of the county auditor, the Superintendent of Public Instruction may direct the county superintendent to withhold the payments specified in this section. *(Added by Stats.1986, c. 1150, § 14. Amended by Stats.1988, c. 1462, § 1.19.)*

California Education Code Section 42130

The superintendent of each school district shall, in addition to any other powers and duties granted to or imposed upon him or her, submit two reports to the governing board of the district during each fiscal year.

The first report shall cover the financial and budgetary status of the district for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be approved by the district governing board no later than 45 days after the close of the period being reported. All reports required by this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127. The reports, and supporting data, shall be maintained and made available by the school district for public review. *(Added by Stats.1991, c. 1213 (A.B.1200), § 23.)*

California Education Code Section 42131

(a)(1) Pursuant to the reports required by Section 42130, the governing board of each school district shall certify, in writing, within 45 days after the close of the period being reported, whether or not the school district is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year. These certifications shall be based upon the board's assessment, on the basis of standards and criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127, of the district budget, as revised to reflect current information regarding the adopted state budget, district property tax revenues pursuant to Sections 95 to 100, inclusive, of the Revenue and Taxation Code, and ending balances for the

preceding fiscal year as reported pursuant to Section 42100. The certifications shall be classified as positive, qualified, or negative, as prescribed by the Superintendent of Public Instruction for the purposes of determining subsequent actions by the Superintendent of Public Instruction, the Controller, or the county superintendent of schools, pursuant to subdivisions (b) and (c). These certifications shall be based upon the financial and budgetary reports required by Section 42130 but may include additional financial information known by the governing board to exist at the time of each certification. For purposes of this subdivision, a negative certification shall be assigned to any school district that likely will be unable to meet its financial obligations for the remainder of the fiscal year or for which existing expenditures practices jeopardize the ability of the district to meet its multiyear financial commitments.

(2) A copy of each certification and a copy of the report submitted to the governing board pursuant to Section 42130 shall be filed with the county superintendent of schools. If a county office of education receives a positive certification when it determines a negative or qualified certification should have been filed, the county superintendent of schools shall change the certification to negative or qualified, as appropriate, and, no later than 60 days after the close of the period being reported, shall provide notice of that action to the governing board of the school district and to the Superintendent of Public Instruction. No later than five days after a school district receives notice of a change by the county superintendent of schools in the district's certification to negative or qualified, the governing board of the district may submit

an appeal to the Superintendent of Public Instruction regarding the validity of that change, in accordance with the criteria applied to those designations pursuant to this subdivision. No later than 30 days after receiving that appeal, the Superintendent of Public Instruction shall determine the certification to be assigned to the district, and shall notify the school district governing board and the county superintendent of schools of that determination.

Copies of any certification in which the governing board is unable to certify unqualifiedly that these financial obligations will be met and a copy of the report submitted to the governing board pursuant to Section 42130 shall be sent to the Controller and the Superintendent of the Public Instruction at that time of the certification, together with a completed transmittal form provided by the Superintendent of Public Instruction. Within 60 days after the close of the reporting period on all school district certifications that are classified as qualified or negative pursuant to this section, the appropriate county superintendent of schools shall submit to the Superintendent of Public Instruction and the Controller his or her comments on those certifications and report any action proposed or taken pursuant to subdivision (b).

(3) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent of Public Instruction, and shall be based on standards of criteria for fiscal stability adopted by the State Board of Education pursuant to Section 33127.

(4) This subdivision shall not preclude the submission of additional budgetary or financial reports by the county superintendent of schools to the district governing board, or to the Superintendent of Public Instruction.

(b) As to any school district having a negative or qualified certification, the county superintendent of schools may do one or more of the following:

(1) Exercise the authority granted in Section 42637, in accordance with the provisions of that section.

(2) Direct the district to submit to the county superintendent of schools a proposal for addressing the fiscal conditions that resulted in the negative or qualified certification.

(3) As to any school district having a negative certification, exercise the authority granted in subdivision (c) of Section 42127.6, in accordance with the provisions of that section.

(c) Whenever a district governing board transmits to the Controller and the Superintendent of Public Instruction a qualified or negative certification as required by subdivision (a), the Superintendent of Public Instruction, in cooperation with the Controller's office, shall review the certification and the attached report together with the comments of the county superintendent of schools and any other pertinent information available to them, and shall review the actions proposed or taken by the county superintendent of schools pursuant to subdivision (b). After consulting with the county superintendent of schools, the Superintendent of Public Instruction,

in cooperation with the Controller's office, may take the following actions, or other actions as appropriate:

(1) With respect to qualified certifications, direct the county superintendent of schools to exercise his or her authority as prescribed in Section 42637.

(2) With respect to negative certifications, conduct an onsite review, direct the county superintendent of schools to exercise the authority granted in Section 42637 or in subdivision (c) of Section 42127.6, or direct the district to prepare alternative plans for resolving the identified fiscal problems.

(d) Within 60 days after the close of each reporting period, each county superintendent of schools shall report to the Controller and the Superintendent of Public Instruction as to whether the governing board of each of the school districts under his or her jurisdiction has submitted the certification required by subdivision (a). That report shall account for all districts under the jurisdiction of the county office of education and indicate the type of certification filed by each district.

(e) The Controller's office may conduct an audit or review of the fiscal condition of any district having a negative or qualified certification.

(f) The governing board of each school district that files a qualified or negative certification for the second report required for any fiscal year under Section 42130, or for which the second report is classified as qualified or negative by the county superintendent of schools, shall provide to the county superintendent of schools, the Controller, and the Superintendent of Public Instruction no

later than June 1, a financial statement that projects the fund and cash balances of the district as of June 30. The governing boards of all other school districts are encouraged to develop a similar financial statement for use in developing the beginning fund balances of the district for the ensuing fiscal year.

(g) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (a) to (f), inclusive, but is governed instead by the interim report, monitoring, and review procedures set forth in subdivision (j) of Section 1240 and in Article 2 (commencing with Section 1620) of Chapter 5 of Part 2. *(Formerly § 35014, added by Stats.1987, c. 1452, § 182. Amended by Stats.1988, c. 1462, § 1.125. Renumbered § 42131 and amended by Stats.1991, c. 1213 (A.B.1200), § 4.)*

California Education Code Section 42132

The governing board of each school district annually, no later than September 16, shall adopt a resolution to identify, pursuant to Division 9 (commencing with Section 7900) of Title 1 of the Government Code, the estimated appropriations limit for the district for the current fiscal year and the actual appropriations limit for the district for the preceeding fiscal year. That resolution shall be adopted at a regular or special meeting of the governing board. The documentation used in the identification of the appropriations limits shall be made available to the public not less that 15 days prior to the date of that meeting. *(Added by Stats.1991, c. 1213 (A.B.1200), § 24.)*

California Education Code Section 42133

(a) A school district that has a qualified or negative certification in any fiscal year may not issue, in that fiscal year or in the next succeeding fiscal year, certificates of participation, tax anticipation notes, revenue bonds, or any other debt instruments that do not require the approval of the voters of the district, nor may the district cause an information report regarding the debt instrument to be submitted pursuant to subdivision (e) of Section 149 of Title 26 of the United States Code, unless the county superintendent of schools determines, pursuant to criteria established by the Superintendent of Public Instruction, that the district's repayment of that indebtedness is probable. A school district is deemed to have a qualified or negative certification for purposes of this subdivision if, pursuant to this article, it files that certification or the county superintendent of schools classifies the certification for that fiscal year to be qualified or negative.

(b) A county office of education that has a qualified or negative certification in any fiscal year may not issue, in that fiscal year or in the next succeeding fiscal year, certificates of participation, tax anticipation notes, revenue bonds, or any other debt instruments not requiring the approval of the voters of the district, nor may the county office of education cause an information report regarding the debt instrument to be submitted pursuant to subdivision (e) of Section 149 of Title 26 of the United States Code, unless the Superintendent of Public Instruction determines that the repayment of that indebtedness by the county office of education is probable. A county office of education is deemed to have a qualified or

negative certification for purposes of this subdivision if, pursuant to this article, it files that certification or the Superintendent of Public Instruction classifies the certification for that fiscal year to be qualified or negative. For purposes of this subdivision, "county office of education" includes a school district that is governed by a county board of education.

(c) No later than March 31, 1992, the Superintendent of Public Instruction shall develop and adopt criteria and standards to govern the determination to be made under subdivisions (a) and (b). *(Added by Stats.1991, c. 1213 (A.B.1200), § 25.)*

California Education Code Section 42134

The Superintendent of Public Instruction shall publish annually a multiyear projection of the revenues that will be available to school districts and county offices of education from state and local sources, for use by school districts and county offices of education in determining the multiyear financial condition of those entities for the purposes of this article and Article 2. That projection shall be based on revenue forecasts issued by the Department of Finance, the Legislative Analyst, or the Commission on State Finance, shall be published in a form that may easily be used by school districts and county offices of education, and shall be made available to those entities. *(Added by Stats.1991, c. 1213 (A.B.1200), § 26.)*

California Education Code Section 42238.1

For the 1986-87 fiscal year and each fiscal year thereafter, the Superintendent of Public Instruction shall compute an inflation adjustment equal to the product of subdivisions (a) and (b):

(a) Compute the sum of the following:

(1) The statewide average base revenue limit per unit of average daily attendance for the prior fiscal year for districts of similar type.

(2) The amount, if any, per unit of average daily attendance received by the district pursuant to Article 8 (commencing with Section 46200) of Chapter 2 of Part 26 for the prior fiscal year.

(b) The percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year. This percentage change shall be determined using the latest data available as of May 1 of the preceding fiscal year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter of the second preceding fiscal year, using the latest data available as of May 1 of the second preceding fiscal year, as reported by the Department of Finance.

(c) This section shall become operative July 1, 1986.

California Education Code Section 44200

This chapter shall be known and may be cited as the "Teacher Credentialing Law of 1988" or "The Bergeson Act."

California Education Code Section 46111

No pupil in a kindergarten shall be kept in school in any day more than four hours exclusive of recesses.

This section shall not apply to the Pasadena Unified School District or counties of the third class as determined pursuant to Section 28024 of the Government Code, as it read on January 1, 1977. In addition, this section shall not apply to the San Bernardino Unified School District with regard to any pupil of that district who is determined by the principal of the school in which that pupil is enrolled, pursuant to testing, teacher recommendation, or both, to be developmentally and academically suited for the longer instructional day.

California Education Code Section 48900

A pupil shall not be suspended from school or recommended for expulsion unless the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has:

(a) Caused, attempted to cause, or threatened to cause physical injury to another person.

(b) Possessed, sold, or otherwise furnished any firearm, knife, explosive, or other dangerous object unless, in the case of possession of any object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and then either sold, delivered, or otherwise furnished to any person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stolen or attempted to steal school property or private property.

(h) Possessed or used tobacco, or any products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets and betel.

However, this section does not prohibit use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Had unlawful possession of, or unlawfully offered, arranged, or negotiated to sell any drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

(*l*) Knowingly received stolen school property or private property.

No pupil shall be suspended or expelled for any of the acts enumerated unless that act is related to school activity or school attendance occurring with a school under the jurisdiction of the superintendent or principal or occurring within any other school district. A pupil may be suspended or expelled for acts which are enumerated in this section and related to school activity or attendance which occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school sponsored activity.

It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities.

California Education Code Section 51510

Except as to textbooks approved by the state board or a county board of education, no bulletin, circular, or publication may be used as the basis of study or recitation or to supplement the regular school studies if the material contained in the bulletin, circular, or publication has been disapproved by the governing board of the school district in which the school is situated.

California Government Code Section 910

§ 910. Contents of claim

A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following:

(a) The name and post office address of the claimant.

(b) The post office address to which the person presenting the claim desires notices to be sent.

(c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted.

(d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

(e) The name or names of the public employee or employees causing the injury, damage, or loss, if known.

(f) The amount claimed if it totals less than ten thousand dollars ($10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars ($10,000), no dollar amount shall be included in the claim. However, it shall indicate whether jurisdiction over the claim would rest in municipal or superior court.

California Government Code Section 970(c)

(c) "Local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the Regents of University of California and does not include the state or any office, officer, department, division, bureau, board, commission or agency of the state claims against which are paid by warrants drawn by the Controller.

California Government Code Section 50075

It is the intent of the Legislature to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution.

California Government Code Section 53313

A community facilities district may be established under this chapter to finance any one or more of the following types of services within an area:

(a) Police protection services, including, but not limited to, criminal justice services. However, criminal justice services shall be limited to providing services for jails, detention facilities, and juvenile halls.

(b) Fire protection and suppression services, and ambulance and paramedic services.

(c) Recreation program services, library services, and the operation and maintenance of museums and cultural facilities. A special tax may be levied for this purpose only upon approval of the voters as specified in subdivision (b) of Section 53328. However, the requirement contained in subdivision (b) of Section 53328 that a certain number of persons have been registered to vote for each of the 90 days preceding the close of the protest hearing does not apply to an election to enact a special tax for recreation program services,library services, and the operation and maintenance of museums and cultural facilities subject to subdivision (c) of Section 53326.

(d) Maintenance of parks, parkways, and open space.

(e) Flood and storm protection services, including, but not limited to, the operation and maintenance of storm drainage systems, *and sandstorm protection systems.*

(f) Services with respect to removal or remedial action for the cleanup of any hazardous substance released or threatened to be released into the environment. As used in this subdivision, the terms "remedial action" and "removal" shall have the meanings set forth in Sections 25322 and 25323, respectively, of the Health and Safety Code, and the term "hazardous substance" shall have the meaning set forth in Section 25281 of the Health and Safety Code. Community facilities districts shall provide the State Department of Health Services and local health and building departments with notification of any cleanup activity pursuant to this subdivision at least 30 days prior to commencement of the activity.

A community facilities district tax approved by vote of the landowners of the district may only finance the services authorized in this section to the extent that they are in addition to those provided in the territory of the district before the district was created. The additional services may not supplant services already available within that territory when the district was created.

California Government Code Section 53313.5

§ 53313.5 Additional financing powers of district; purchase, construction, expansion, improvement, rehabilitation, or planning and design work of real or tangible property

A community facilities district may also finance the purchase, construction, expansion, improvement, or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer or may finance planning and design work which is directly related to the purchase, construction, expansion, or rehabilitation of any real or tangible property. The facilities need not be physically located within the district. A district may not lease out facilities which it has financed except pursuant to a lease agreement or annexation agreement entered into prior to January 1, 1988. A district may only finance the purchase of facilities whose construction has been completed, as determined by the legislative body, before the resolution of formation to establish the district is adopted pursuant to Section 53325.1, except that a district may finance the purchase of facilities completed after the adoption of the resolution of formation if the facility was constructed as if it had been constructed under the direction and supervision, or under the authority of, the local agency. For example, the community facilities district may finance facilities, including, but not limited to, the following:

(a) Local park, recreation, parkway, and open-space facilities.

(b) Elementary and secondary schoolsites and structures provided that the facilities meet the building area

and cost standards established by the State Allocation Board.

(c) Libraries.

(d) Child care facilities, including costs of insuring the facilities against loss, liability insurance in connection with the operation of the facility, and other insurance costs relating to the operation of the facilities, but excluding all other operational costs. However, the proceeds of bonds issued pursuant to this chapter shall not be used to pay these insurance costs.

(e) The district may also finance the construction or undergrounding of water transmission and distribution facilities, natural gas pipeline facilities, telephone lines, facilities for the transmission or distribution of electrical energy, and cable television lines to provide access to those services to customers who do not have access to those services or to mitigate existing visual blight. The district may enter into an agreement with a public utility to utilize those facilities to provide a particular service and for the conveyance of those facilities to the public utility. If the facilities are conveyed to the public utility, the agreement shall provide for a refund by the public utility to the district or improvement area thereof for the cost of the facilities. Any reimbursement made to the district shall be utilized to reduce or minimize the special tax levied within the district or improvement area, or to construct or acquire additional facilities within the district or improvement area, as specified in the resolution of formation.

(f) The district may also finance the acquisition, improvement, rehabilitation, or maintenance of any real

or other tangible property, whether privately or publicly owned, for the purposes described in subdivision (e) of Section 53313.

(g) The district may also pay in full all amounts necessary to eliminate any fixed special assessment liens or to pay, repay, or defease any obligation to pay or any indebtedness secured by any tax, fee, charge, or assessment levied within the area of a community facilities district or may pay debt service on that indebtedness. In addition, tax revenues of a district may be used to make lease or debt service payments on any lease, lease purchase contract, or certificate of participation used to finance authorized district facilities.

(h) Any other governmental facilities which the legislative body creating the community facilities district is authorized by law to contribute revenue to, or construct, own, or operate. However, the district shall not operate or maintain or, except as otherwise provided in subdivisions (e) and (f), have any ownership interest in any facilities for the transmission or distribution of natural gas, telephone service, or electrical energy.

(i) (1) A district may also pay for the following:

(A) Work deemed necessary to bring buildings *or real property,* including privately owned buildings *or real property,* into compliance with seismic safety standards or regulations. Only work certified as necessary to comply with seismic safety standards or regulations by local building officials may be financed. No project involving the dismantling of an existing building and its replacement by a new building, nor the construction of a new or substantially new building may be financed pursuant to

this subparagraph. Work on qualified historical buildings or structures shall be done in accordance with the State Historical Building Code (Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code).

(B) In addition, within * * * *any county or area* designated by the President of the United States *or by the Governor* as *a* disaster * * * *area or for which the Governor has proclaimed the existence of a state of emergency because of earthquake damage,* a district may also pay for any work deemed necessary to *repair any damage to real property directly or indirectly caused by the occurrence of an earthquake cited in the President's or the governor's designation or proclamation, or by aftershocks associated with that earthquake, including work to* reconstruct, repair, shore up, or replace any building damaged or destroyed by the earthquake, *and specifically including, but not limited to, work on any building damaged or destroyed in the Loma Preta earthquake* which occurred on October 17, 1989, or by its aftershocks. Work may be financed pursuant to this subparagraph only on *property or* buildings identified in a resolution of intention to establish a community facilities district adopted * * * *within seven years of the date on which the county or area is designated as a disaster area by the President or by the Governor or on which the Governor proclaims for the area the existence of a state of emergency.*

(2) Work on privately owned *property,* including reconstruction or replacement of privately owned buildings pursuant to * * * *subparagraph (B) of paragraph (1),* may only be financed by a tax levy if all of the votes cast on the question of levying the tax, vote in favor of levying the tax, *or with the prior written consent to the tax of the owners of all property which may be subject to the tax in which*

case the prior written consent shall be deemed to constitute a vote in favor of the tax and any associated bond issue. Any district created to finance seismic safety work on privately owned buildings, including repair, reconstruction, or replacement of privately owned buildings pursuant to this subdivision, shall consist only of lots or parcels on which the legislative body finds that the buildings to be worked on, *repaired,* reconstructed, or replaced, pursuant to this subdivision, are located or were located before being damaged or destroyed by the * * * earthquake *cited pursuant to subparagraph (B) of paragraph (1)* or * * * *by the* aftershocks *of that earthquake.*

(j) (1) A district may also pay for the following:

(A) Work deemed necessary to repair and abate damage caused to privately owned buildings and structures by soil deterioration. "Soil deterioration" means a chemical reaction by soils that causes structural damage or defects in construction materials including concrete, steel, and ductile or cast iron. Only work certified as necessary by local building officials may be financed. No project involving the dismantling of an existing building or structure and its replacement by a new building or structure, nor the construction of a new or substantially new building or structure may be financed pursuant to this subparagraph.

(B) Work on privately owned buildings and structures pursuant to this subdivision, including reconstruction, repair, and abatement of damage caused by soil deterioration, may only be financed by a tax levy if all of the votes cast on the question of levying the tax vote in favor of levying the tax. Any district created to finance

the work on privately owned buildings or structures, including reconstruction, repair, and abatement of damage caused by soil deterioration, shall consist only of lots or parcels on which the legislative body finds that the buildings or structures to be worked on pursuant to this subdivision suffer from soil deterioration.

Ohio Revised Code Section 133.06(F)

(F) A school district may issue securities for emergency purposes, in a principal amount that does not exceed an amount equal to three per cent of its tax valuation, as provided in this division.

(1) A board of education, by legislation, may declare an emergency if it determines both of the following:

(a) School buildings or other necessary school facilities in the district have been wholly or partially destroyed, or condemned by a constituted public authority, or that such buildings or facilities are partially constructed, or so constructed or planned as to require additions and improvements to them before the buildings or facilities are usable for their intended purpose, or that corrections to permanent improvements are necessary to remove or prevent health or safety hazards;

(b) Existing fiscal and net indebtedness limitations make adequate replacement, additions, or improvements impossible.

(2) Upon the declaration of an emergency, the board of education may, by legislation, submit to the electors of the district pursuant to section 133.18 of the Revised Code the question of issuing securities for the purpose of paying the cost, in excess of any insurance or condemnation proceeds received by the district, of permanent improvements to respond to the emergency need.

(3) The procedures for the election shall be as provided in section 133.18 of the Revised Code, except that:

(a) The form of the ballot shall describe the emergency existing, refer to this division as the authority under which the emergency is declared, and state that the amount of the proposed securities exceeds the limitations prescribed by division (B) of this section;

(b) The legislation required by division (B) of section 133.18 of the Revised Code shall be certified to the county auditor and the board of elections at least seventy-five days prior to the election;

(c) The county auditor shall advise and, not later than sixty-five days before the election, confirm that advice by certification to, the board of education of the information required by division (C) of section 133.18 of the Revised Code;

(d) The board of education shall then certify its legislation and the information required by division (D) of section 133.18 of the Revised Code to the board of elections not less than sixty days prior to the election.

(4) Notwithstanding division (B) of section 133.21 of the Revised Code, the first principal payment of securities issued under this division may be set at any date not

later than sixty months after the earliest possible principal payment otherwise provided for in that division.

Ohio Revised Code Section 133.14

(A) The taxing authority of a subdivision may issue securities for the purpose of providing funds with which to pay one or more final judgments rendered against the subdivision, including settlements of claims approved by a court, if the fiscal officer of the subdivision certifies to the taxing authority that the subdivision is unable, within the limits of its other funds that have been appropriated and are available for the purpose, to pay the final judgment or judgments. The principal amount of the securities issued may not exceed the aggregate of the judgments plus interest on the judgments to the approximate date on which the proceeds of the securities will become available, costs and expenses assessed or taxed against and defense costs of the subdivision, and other costs, including financing costs, permitted by this chapter to be paid from the proceeds of securities.

(B) Securities issued under division (A) of this section may as determined by the taxing authority be either:

(1) General obligation securities;

(2) Special obligation securities that are payable only out of the particular taxes and revenues pledged, other than ad valorem property taxes, and that are not general obligations of the subdivision.

(C) The last maturity of bonds issued pursuant to this section shall be not later than the last day of December of the twenty-fifth year following year in which securities for the purpose are issued.

Ohio Revised Code Section 2744.081

(A) Regardless of whether a political subdivision secures a policy or policies of liability insurance, or establishes and maintains a self-insurance program or enters into an agreement for the joint administration of a self-insurance program, under section 2744.08 of the Revised Code, the political subdivision may, pursuant to a written agreement, to the extent that it considers necessary, join with other political subdivisions in establishing and maintaining a joint self-insurance pool to provide for the payment of judgments, settlement of claims, expense, loss, and damage that arises, or is claimed to have arisen, from an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function and to indemnify or hold harmless the subdivision's employees against such loss or damage.

All of the following apply to a political subdivision joint self-insurance pool under this section:

(1) Such funds shall be reserved as are necessary, in the exercise of sound and prudent actuarial judgment, to cover potential political subdivision and employee liability, expense, loss, and damage. A report of amounts so reserved and disbursements made from such funds,

together with a written report of a member of the American academy of actuaries certifying whether the amounts reserved conform to the requirements of this division, are computed in accordance with accepted loss reserving standards, and are fairly stated in accordance with sound loss reserving principles, shall be submitted, on or before the last day of March for the preceding calendar year, to the superintendent of insurance for his approval. The superintendent shall review the report for the purpose of determining whether the reserves of the pool are adequate in accordance with reserve standards that would be applicable to a private insurance company writing the same coverages. The joint self-insurance pool shall pay the reasonable costs and expenses incurred in the review of the actuarial report or in any other investigation that the superintendent considers necessary. The superintendent may adopt any rules under Chapter 119. of the Revised Code that he considers appropriate for accomplishing the purpose of division (A)(1) of this section. The superintendent shall inform the reporting authority of his approval or disapproval of the report. In the case of a disapproval, the superintendent shall order the reporting authority to comply with this division within a reasonable period of time under the circumstances to be determined by the superintendent.

The report required by this division shall include, but not be limited to, disbursements made for the administration of the pool, including claims paid, costs of the legal representation of political subdivisions and employees, and fees paid to consultants.

(2) A contract may be awarded, without the necessity of competitive bidding, to any person, political subdivision, nonprofit corporation organized under Chapter 1702. of the Revised Code, or regional council of governments created under Chapter 167. of the Revised Code for purposes of administration of a joint political subdivision self-insurance pool. No such contract shall be entered into without full, prior, public disclosure of all terms and conditions. Such disclosure shall include, at a minimum, a statement listing all representations made in connection with any possible savings and losses resulting from such contract, and potential liability of any political subdivision or employee. The proposed contract and statement shall be disclosed and presented at a meeting of the political subdivision not less than one week prior to the meeting at which the political subdivision authorizes the contract.

(3) The pool shall include a contract with a member of the American academy of actuaries for the preparation of the written evaluation of the reserve funds required under division (A)(1) of this section.

(4) A joint insurance pool may allocate the costs of funding the pool among the funds or accounts in the treasuries of the political subdivisions on the basis of their relative exposure and loss experience.

(B) Two or more political subdivisions may also authorize the establishment and maintenance of a joint risk-management program, including but not limited to the employment of risk managers and consultants, for the purpose of preventing and reducing the risks covered by

insurance, self-insurance, or joint self-insurance programs.

(C) A political subdivision is not liable under a joint self-insurance pool for any amount in excess of amounts payable pursuant to the written agreement for the participation of the political subdivision in the joint self-insurance pool. Under a joint self-insurance pool agreement a political subdivision may, to the extent permitted under the written agreement, assume the risks of any other political subdivision, including the indemnification of its employees. A joint self-insurance pool, established under this section, is deemed a separate legal entity for the public purpose of enabling the members of the joint self-insurance pool to obtain insurance or to provide for a formalized, jointly administered self-insurance fund for its members. An entity created pursuant to this section is exempt from all state and local taxes.

Any political subdivision may issue general obligation bonds, or special obligation bonds which are not payable from real or personal property taxes, and may also issue notes in anticipation of such bonds, pursuant to an ordinance or resolution of its legislative authority or other governing body for the purpose of providing funds to pay judgments, losses, damages, and the expenses of litigation or settlement of claims, whether by way of a reserve or otherwise, and to pay the political subdivision's portion of the cost of establishing and maintaining a joint self-insurance pool or to provide for the reserve in the special fund authorized by division (A)(2)(a) of section 2744.08 of the Revised Code.

In its ordinance or resolution authorizing bonds or notes under this section, a political subdivision may elect to issue such bonds or notes under the procedures set forth in Chapter 133. of the Revised Code. In the event of such an election, notwithstanding Chapter 133. of the Revised Code, the maturity of the bonds may be for any period authorized in the ordinance or resolution not exceeding twenty years, which period shall be the maximum maturity of the bonds for purposes of section 133.22 of the Revised Code.

Bonds and notes issued under this section shall not be considered in calculating the net indebtedness of the political subdivision under section 133.04, 133.05, 133.06, and 133.07 of the Revised Code. Sections 9.98 to 9.983 [9.98.3] of the Revised Code are hereby made applicable to bonds or notes authorized under this section.

(D)(1) A joint self-insurance pool, in addition to its powers to provide self-insurance against any and all liabilities under this chapter, may also include any one or more of the following forms of property or casualty self-insurance for the purpose of covering any other liabilities or risks of the members of the pool:

(a) Public general liability, professional liability, or employees liability;

(b) Individual or fleet motor vehicle or automobile liability and protection against other liability and loss associated with the ownership, maintenance, and use of motor vehicles;

(c) Aircraft liability and protection against other liability and loss associated with the ownership, maintenance, and use of aircraft;

(d) Fidelity, surety, and guarantee;

(e) Loss or damage to property and loss of use and occupancy of property by fire, lightning, hail, tempest, flood, earthquake, or snow, explosion, accident, or other risk;

(f) Marine, inland transportation and navigation, boiler, containers, pipes, engines, flywheels, elevators, and machinery;

(g) Environmental impairment;

(h) Loss or damage by any hazard upon any other risk to which political subdivisions are subject, which is not prohibited by statute or at common law from being the subject of casualty or property insurance.

(2) A joint self-insurance pool is not an insurance company. Its operation does not constitute doing an insurance business and is not subject to the insurance laws of this state.

(E) This section shall not be construed to affect the ability of any political subdivision to self-insure under the authority conferred by any other section of the Revised Code.

Ohio Revised Code Section 5705.02

The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing

unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the "ten-mill limitation," and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution.

Ohio Revised Code Section 5705.194

The board of education of any city, local, exempted village, or joint vocational school district may at any time declare by resolution that the revenue which will be raised by all tax levies which the district is authorized to impose, when combined with state and federal revenues, will be insufficient to provide for the emergency requirements of the school district or to avoid an operating deficit, and that it is therefore necessary to levy an additional tax in excess of the ten-mill limitation. Such resolution shall be confined to a single purpose and shall specify the purpose thereof. If the purpose of the levy is limited to the purpose of an existing levy imposed pursuant to this section and is proposed to renew all or a portion of the proceeds derived from that levy, it shall be called a renewal levy and shall be so designated on the ballot. The resolution shall further specify the amount of money it is necessary to raise for the specified purpose for each calendar year the millage is to be imposed; if a renewal levy, whether the levy is to renew all, or a

portion of, the existing levy; and the number of years in which the millage is to be in effect, which may include a levy upon the current year's tax list. The number of years may be any number not exceeding five. The question shall be submitted at a special election on a date specified in the resolution. The date shall not be earlier than eighty days after the adoption and certification of such resolution to the county auditor and shall be consistent with the requirements of section 3501.01 of the Revised Code. A resolution for a renewal levy shall not be placed on the ballot unless the question is submitted on the date of the general election held during the last year the tax to be renewed may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year.

The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 [5705.21.4] of the Revised Code.

The resolution shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. A copy of such resolution shall immediately after its passing be certified to the county auditor of the proper county, Section 5705.195 [5705.19.5] of the Revised Code shall govern the arrangements for the submission of such question and other matters concerning such election. Publication of notice of such election shall be made in one or more newspapers of general circulation in the county once a week for three consecutive weeks. If a majority of the electors voting on the question so submitted in an election vote in favor of such levy, the board of

education of the school district may forthwith make the additional levy necessary to raise the amount specified in the resolution for the purpose stated in the resolution. Such tax levy shall be included in the next tax budget that is certified to the county budget commission.

After the approval of the levy and prior to the time when the first tax collection from such levy can be made, the board of education may anticipate a fraction of the proceeds of such levy and issue anticipation notes in an amount not exceeding the total estimated proceeds of the levy to be collected during the first year of the levy.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance over a period not to exceed five years, and may have principal payment in the year of their issuance.

Ohio Revised Code Section 5705.21

(A) At any time the board of education of any city, local, exempted village, or joint vocational school district by a vote of two-thirds of all its members may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide an adequate amount for the necessary requirements of the school district, that it is necessary to levy a tax in excess of such limitation for one of the purposes specified in division (A), (D), (F), (H), or (DD) of section 5705.19 of the Revised Code, and that the question of such additional

tax levy shall be submitted to the electors of the school district at a special election on a day to be specified in the resolution.

The submission of questions to the electors under this section is subject to the limitation on the number of election dates established by section 5705.214 [5705.21.4] of the Revised Code.

(B) Such resolution shall be confined to a single purpose and shall specify the amount of the increase in rate that it is necessary to levy, the purpose thereof, and the number of years during which the increase in rate shall be in effect. The number of years may be any number not exceeding five or, if the levy is for current expenses of the district, for a continuing period of time. The resolution shall specify the date of holding such election, which shall not be earlier than seventy-five days after the adoption and certification of such resolution and which shall be consistent with the requirements of section 3501.01 of the Revised Code. The resolution shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. A copy of such resolution shall immediately after its passing be certified to the board of elections of the proper county in the manner provided by section 5705.25 of the Revised Code, and that section shall govern the arrangements for the submission of such question and other matters concerning such election, to which that section refers, except that such election shall be held on the date specified in the resolution. Publication of notice of such election shall be made in one or more newspapers of general circulation in the county once a week for four consecutive weeks. If a majority of

the electors voting on the question so submitted in an election vote in favor of such levy, the board of education may forthwith make the necessary levy within such school district at the additional rate, or at any lesser rate in excess of the ten-mill limitation on the tax list, for the purpose stated in the resolution. A levy for a continuing period of time may be reduced pursuant to section 5705.261 [5705.26.1] of the Revised Code. Such tax levy shall be included in the next tax budget that is certified to the county budget commission.

(C) After the approval of a levy on the current tax list and duplicate for current expenses, for recreational purposes, for community centers provided for in section 755.16 of the Revised Code, or for a public library of the district and prior to the time when the first tax collection from such levy can be made, the board of education may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy to be collected during the first year of the levy.

After the approval of a levy for permanent improvements, the board of education may anticipate a fraction of the proceeds of such levy and issue anticipation notes in a principal amount not exceeding fifty per cent of the total estimated proceeds of the levy remaining to be collected in each year over a period of five years after the issuance of such notes.

The notes shall be issued as provided in section 133.24 of the Revised Code, shall have principal payments during each year after the year of their issuance

over a period not to exceed five years, and may have a principal payment in the year of their issuance.

Ohio Revised Code Section 5748.02

(A) The board of education of any school district, except a county or joint vocational school district, may declare, by resolution, the necessity of raising annually a specified amount of money for school district purposes. A copy of the resolution shall be certified to the tax commissioner no later than eighty-five days prior to the date of the election at which the board intends to propose a levy under this section. Upon receipt of the copy of the resolution, the tax commissioner shall estimate both of the following:

(1) The property tax rate that would have to be imposed in the current year by the district to produce an equivalent amount of money;

(2) The income tax rate that would have had to have been in effect for the current year to produce an equivalent amount of money from a school district income tax.

Within ten days of receiving the copy of the board's resolution, the commissioner shall prepare these estimates and certify them to the board. Upon receipt of the certification, the board may adopt a resolution proposing an income tax under division (B) of this section at the estimated rate contained in the certification rounded to the nearest one-fourth of one per cent. The commissioner's certification applies only to the board's proposal

to levy an income tax at the election for which the board requested the certification. If the board intends to submit a proposal to levy an income tax at any other election, it shall request another certification for that election in the manner prescribed in this division.

(B) Upon the receipt of a certification from the tax commissioner under division (A) of this section, a majority of the members of a board of education may adopt a resolution proposing the levy of an annual tax for school district purposes on the school district income of individuals and of estates. The proposed levy may be for a continuing period of time or for a specified number of years. The resolution shall set forth the purpose for which the tax is to be imposed, the rate of the tax, which shall be the rate set forth in the commissioner's certification rounded to the nearest one-fourth of one per cent, the number of years the tax will be levied or that it will be levied for a continuing period of time, the date on which the tax shall take effect, which shall be the first day of January of any year following the year in which the question is submitted, and the date of the election at which the proposal shall be submitted to the electors of the district, which shall be on the date of a primary, general, or special election the date of which is consistent with section 3501.01 of the Revised Code.

(C) a resolution adopted under division (B) of this section shall go into immediate effect upon its passage, and no publication of the resolution shall be necessary other than that provided for in the notice of election. Immediately after its adoption and at least seventy-five days prior to the election at which the question will appear on the ballot, a copy of the resolution shall be

certified to the board of elections of the proper county, which shall submit the proposal to the electors on the date specified in the resolution. The form of the ballot shall be as provided in section 5748.03 of the Revised Code. Publication of notice of the election shall be made in one or more newspapers of general circulation in the county once a week for four consecutive weeks. The notice shall contain the time and place of the election and the question to be submitted to the electors. The question covered by the resolution shall be submitted as a separate proposition, but may be printed on the same ballot with any other proposition submitted at the same election, other than the election of officers.

(D) No board of education shall submit the question of a tax on school district income to the electors of the district more than twice in any calendar year. If a board submits the question twice in any calendar year, one of the elections on the question shall be held on the date of the general election.